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ABSTRACT

Papers concerning the lawsuit charging that Yale University condones sexual harassment of women students, Alexander v. Yale, have been compiled by the Yale Undergraduate Women's Caucus. The specifics of the case are described by Caucus publications and press releases. The suit, filed in July 1977 by four female undergraduates and one male professor, charges that the university condones sexual harassment of women students by not providing adequate grievance mechanisms to handle complaints and that this constitutes sex discrimination in violation of Title IX of the Education Amendments of 1972. The caucus views this as a class action suit, claiming that sexual harassment is widespread. Among the papers included are: deposition notices, memos, briefs, and related correspondence, as well as statements by the plaintiff and the Yale Undergraduate Women's Caucus. The court's ruling on motions to dismiss, and memorandum of decision are also included. The December 21, 1977 decision by a federal magistrate ruling that the lawsuit against Yale University may go forward to trial is also discussed. (SF)

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- STATEMENT -

On July 2, Judge Ellen Bree Burns issued her opinion in the case Price v. Yale, finding, after a trial, that the plaintiff had not proved her allegations of sex discrimination based on the university's lack of adequate grievance mechanisms to handle complaints of sexual harassment. The Judge based her decision on her findings of fact that the incident did not occur and that Price had not shown any adverse influence on her grade in the course.

The Judge noted that when Price first complained, "Yale University had no . . . regulations setting forth any procedures to provide for resolution of such complaints." She further agreed with the plaintiff that, when Yale did have regulations setting forth procedures, "the procedures . . . give no real guidance to students or to faculty as to procedure to be followed with respect to claims such as Miss Price had made." She concluded, however, that the absence of such procedures did not adversely affect Ms. Price's educational opportunities.

"It is hard to imagine," said Anne Simon, one of the attorneys for Pamela Price, "how the judge could have come to this conclusion when the legal basis of the case was Title IX, which requires regularized procedures as part of universities' obligation not to discriminate against their students on the basis of sex. The decision fails to take seriously the possibility that Yale really is under some legal obligations to its students." By focusing on the individuals rather than on Title IX, the judge reduced the case to a black woman's accusation and a white man's denial of improper sexual conduct, with all too predictable results. Judge Burns found that the incident did not occur, but the opinion offered no support for this conclusion. "It is appalling, in this day and age, that a finding of this sort, which amounts to saying that Price made the entire thing up, can be made without providing any evidence from the trial to back it up," commented Phyllis Crocker, a legal worker on the case.

HE 012 122

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"It's the same old story," said Ms. Price. "Where sex is concerned, black women's accusations are considered lies and white men's denials are believed. Unfortunately, the trial, which was presided over by a woman, was merely another manifestation of the racism and sexism pervasive in society and reflected in its laws. It is symbolic that I entered this case primarily because I am a woman and lost it primarily because I am a black woman. But that is all the more reason for us to continue to fight back against all forms of oppression."

"This decision makes clear that Judge Burns lacked the guts and insight necessary to really listen to a woman's painful experience of sexual harassment and to challenge Yale's neglect of her complaints. The irony, however, is that we lost this round, but achieved other important goals. Women in universities all over the country are now coming forward with their complaints, breaking the debilitating fear and isolation which have rendered sexual harassment invisible for so long," said Linda Hoaglund, of the Grievance Committee of Yale's Undergraduate Women's Caucus.

Price's lawyers are considering appealing the decision. "We lost the wrong case," Anne Simon observed. "Judge Burns did not allow any evidence that would have shown that Yale discriminates against women. Her decision is vulnerable to attack on appeal for that reason, although her emphasis on the 'facts' might make an appellate court less likely to reverse her decision. It's unfortunate that an issue of such legal and political importance to women was so constricted in the way it could be presented in court, but one unenlightened decision is not going to stop women from speaking out about sexual harassment."

July 1978

Alexander v. Yale

The legal system and the legal language have constrained the larger issues raised by Alexander v. Yale. Instead of focusing on the humiliation and anguish women suffer in their experiences of sexual harassment, it has focused on legal technicalities and has become an individual damage issue. The case at this point has been effectively reduced to one Yale woman's experience of sexual harassment by one Yale professor. This is testimony to the inadequacy of the law in addressing the real issues and problems in people's lives. In this instance, it has both trivialized and made abstract the very real pain of sexually harassed women.

The case raises issues relevant to all women. It is one more instance of women fighting to free themselves from the vulnerability that results from their social and political powerlessness. We are refusing to submit to the threats and manipulations of men in positions of power. We are refusing to allow those men to control our lives and tell us what to do. For black women, this struggle is compounded by the realities of rasicm in America today.

Therefore, we demand the right of women at Yale in particular to an education free from the degredation of sexual harassment, but in so doing we demand the right of all women to a life free from sexist oppression.

Ronni Alexander
Pamela Price
Linda Hoaglund, YUWC

January 1978

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STATEMENT

Bringing to a close nearly a year and a half of legal argument, federal judge Ellen Bree Burns has denied Yale University's request to dismiss a lawsuit, Price v. Yale University, charging the university with sex discrimination based on sexual harassment of women students. In a ruling filed in Federal District Court in New Haven on November 29, Judge Burns cleared the way for a trial on the merits of the plaintiff's claim of sex discrimination under Title IX of the Education Amendments of 1972.

The ruling, one of a number of legal decisions in the case, was made after an extensive hearing on the role of the Department of Health, Education and Welfare in the enforcement of Title IX, which forbids sex discrimination in educational programs receiving federal funds. After considering the testimony of John Bynoe, Director of HEW's Region 1 office in Boston, Judge Burns concluded that "it is highly doubtful that HEW was practically capable of providing plaintiff Price with any meaningful remedy within an adequate period of time." And acting on legal arguments advanced by both HEW and the plaintiff, the court further concluded that "even if HEW had taken steps to pursue the sort of administrative remedy for which it is designed, such remedy would still not be sufficiently adequate to foreclose the need for implying a private right of action under Title IX."

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The decision disposed of the issue most consistently pressed by Yale - that the plaintiffs in the suit must complain to HEW, rather than seek relief in federal court. In her opinion, Judge Burns emphasized the importance of access to federal courts, noting that HEW is only empowered to cut off federal funds to an offending institution, and "there is nothing to stop Yale from paying the price of that sanction if it so desires." Further, such a drastic step can be taken only after HEW "wrestles with the legal resources and bureaucratic foot-dragging of a recalcitrant recipient institution."

Anne Simon, the plaintiff's attorney, expressed satisfaction with the decision. "We are pleased that Judge Burns so clearly recognized how important it is for individual women to be able to enforce their right to an education free from sex discrimination. Now we can return to the real issue in this case - the university's responsibility to take action against sexual harassment."

November 30, 1978

3 February 1978

FOR IMMEDIATE RELEASE

In a path-breaking decision with profound implications for all women, Magistrate Latimer decided that sexual harassment can be sex discrimination in education. His decision reads:

"It is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education...When a complaint of such an incident is made, university inaction then does assume significance, for on refusing to investigate, the institution may sensibly be held responsible for condoning or ratifying the employee's invidiously discriminatory conduct." (p.6)

No court has recognized this before. He also concluded that such a claim of discrimination can, at least in some circumstances, be presented directly to a federal court, without first having to complain to the overburdened Department of Health, Education and Welfare. He rejected Yale's contention that no university receiving federal funds could be ehld responsible for discrimination except by complaint to HEW.

In making these decisions, the judge excluded the claims of some of the plaintiffs. This is a common practice when cases raising new legal claims are first presented, as the courts try to work out how to treat novel claims. In this case, three plaintiffs were excluded because they were not direct victims of sexual harassment. One was excluded because they were not direct victims of sexual harassment. One was excluded because she has graduated, not because her complaint might not have been valid if she were still a student. One was excluded because the judge did not think that she had complained about her incident enough. In none of these cases did the judge make any decision on the facts of the claims.

These exclusions raise several questions. Are only direct victims hurt by a system that condones sexual harassment? Do women stop being hurt by Yale's inaction the moment they graduate?

Should a woman be required to complain to a nonexistent procedure before she can be allowed to complain about its nonexistence?

The plaintiff who satisfied the judge's criteria - a direct victim, still a student, who complained vigorously - exemplifies his definition of that injury of sexual harassment for which he is willing, as a matter of law, to hold the university responsible. Others might carry it further. But this first recognition that Yale University is responsible under federal law for its treatment of women who complain about sexual explo tation in education is little short of revolutionary.

Official Yale reports of this case contain misrepresentations of the judge's decision. The Yale Weekly Bulletin of Jan 23-30 states:

"The Magistrate did not reach a decision on the merits of the claim of the sixth plaintiff, and declined to rule at this time on Yale's position that the claim should be dismissed..."

A letter from President Gray to a emember of the Grievance Committee and to parents who have inquired about the lawsuit repeated the erroneous statement. Magistrate Latimer specifically says:

"Plaintiff Price's complaint may not be dismissed on its face. (p.10)...For reasons stated above, the instant motion to dismiss is accordingly hereby granted as to plaintiffs Alexander, Olivarius, Reifler, Stone and Winkler, and denied as to plaintiff Price." (Emphasis ours)

Contrary to Yale's claims, the judge did make a decision on Yale's motion to dismiss the case of the sixth plaintiff.

On January 31, 1978 Judge Newman officially accepted Magistrate Latimer's opinion.

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In a careful decision with far-ranging implications for women, Federal Magistrate Arthur Latimer on December 21 held that the lawsuit against Yale University for sex discrimination based on sexual harassment, pending since July, 1977 in New Haven, may go forward to a trial on the merits. Using reasoning developed in the context of employment discrimination, he held that sexual harassment, if proven, can constitute sex discrimination in federally funded educational programs. This is the first time that such a ruling has been made, according to Anne Simon, attorney for the plaintiffs. Magistrate Latimer also granted the right to sue in federal court, rather than relying exclusively on recourse to the Department of Health, Education and Welfare, and characterized more explicitly than ever before the requisites for such a suit.

Connecting sexual harassment in education with sexual harassment at work, Magistrate Latimer stated ". . . it is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment. . . ." He held institutions responsible when victims complain to officials who fail to act.

Noting that the adequacy of HEW's enforcement of Title IX, the statute on which the suit is based, had been questioned, Latimer

[MORE]

disagreed with recent rulings that plaintiffs may not seek private redress in federal court. He found it "obviously significant that the enforcing agency urges recognition of private suit rights," as HEW did in this case. Relying on the extensive acceptance of the right to sue privately in federal court under Title VI of the Civil Rights Act of 1964, the magistrate expressed concern that without a similar right under Title IX, which prohibits sex discrimination in education, there will be "substantially different enforcement rights to victims of sex discrimination than to those subjected to discrimination in federally-assisted programs 'on the grounds of race, color, or national origin'. . . ."

In the allegations of plaintiff Pamela Price, Magistrate Latimer found all the elements he held necessary for such a suit. Ms. Price alleges that she received a grade in a course that was not the result of her academic work, but rather a retaliation for her refusal of her male professor's sexual demands. She complained extensively to Yale officials, but not to HEW. According to the magistrate, absence of a "realistic possibility of a meaningful remedy" supported her access to federal court. Since she is now applying to law schools, the urgency of her case underlined the need for an adequate grievance procedure at Yale, the relief the lawsuit seeks. The ruling clears the way for a hearing on her request for an injunction that would temporarily suspend the operation of the grade.

Five plaintiffs were found not to meet Magistrate Latimer's criteria. Four of them were characterized as not being, at the

time the suit was filed, directly and personally victimized by the alleged discrimination. The magistrate held that one student, who had graduated when the suit was filed, would not benefit from the relief sought in the case, and thus her claim was moot. Other plaintiffs' claims were found not to allege a "personal exclusion from a federally funded edcuational program or activity or. . . personal denial of full participation in the benefits of such a program or activity in any measurable sense." In considering the contours of the claims, Magistrate Latimer also pointed to what he said was a "critical distinction" between the situation of Ms. Price and other plaintiffs dismissed from the suit, based on the extent to which complaints to university officials had been made.

Commenting on the importance of the ruling and the next steps to be taken, Ms. Simon said, "I am still studying Magistrate Latimer's thoughtful decision. It is an excellent example of the way women's real situation can be taken seriously. Because I think that some of the dismissed plaintiffs present claims that are important aspects of the problem of sexual harassment, I am actively contemplating the possibilities for appealing some of the dismissals."

[END]

Note: A statement by Ms. Price is available on request

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On December 7, U.S. Magistrate Arthur Latimer approved the addition of two women plaintiffs to the lawsuit against Yale University for sex discrimination by condoning sexual harassment of women students by male faculty and administrators. The two new undergraduate women joined three present students or recent graduates and one faculty member who filed the suit in July, 1977. "Although the suit was already very strong," said Anne Simon, attorney for the plaintiffs, "the presence of these two women broadens the range of facts brought before the court." One of the new plaintiffs had complained to Yale officials immediately after the sexual incident, to no avail. One was given a low grade in a course; one was not granted an athletic letter for managing a varsity team. Supporters of the case noted the fact that the plaintiffs now include a black woman and one woman sexually harassed by an athletic coach, raising two crucial dimensions of the problem which had not previously been represented.

The next developments in the case should come soon in two new judicial decisions. The first must resolve the request by the NOW (National Organization for Women) Legal Defense and Education Fund and the WEAL Fund for admission of their amicus curiae brief in support of the plaintiffs' view that a private lawsuit may be brought under Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational programs receiving federal funds.

[MORE]

The other judicial decision will resolve Yale's motion to dismiss, in which they argue that the plaintiffs' complaint is inadequate to ground a legal claim under Title IX. The plaintiffs argue that the lack of an adequate grievance mechanism effectively condones the imposition of sexual pressures on women students, which in turn deprives them of equal access to the benefits of a Yale education - access which male students enjoy free of comparable sexual demands. Yale's out of court position has been that its current grievance procedures are fully adequate to the problem - if, indeed, there is a problem at all. "The circumstances of the two new plaintiffs give additional insight into the inadequacies of Yale's current practices," noted Harriet Dichter, a member of the Yale Undergraduate Women's Caucus.

Women's athletics is a particularly sensitive subject for Yale women, who recently complained to the Department of Health, Education and Welfare about unequal funding and facilities. Athletics has always been important in the development of women's self-confidence and physical self respect. As Emily Howe, president of the Yale Athletic Association, observed, "To be sexually harassed by a coach can be devastating to women who are striving to overcome learned physical inferiority and to become a part of the athletic community."

"Black women have always been sexually harassed, have often protested it, and have been ignored even more thoroughly than white women," said plaintiff Pamela Price. "For a white man to sexually harass a black woman can be a sexist way of expressing his racism," she continued. Abbe Smith, head of the Yale Undergraduate Caucus Grievance Committee, commented,

"We hope that the courage of this black woman will encourage others, who may feel that women's issues have been defined in terms of the experiences of white women, to join this fight."

Plaintiff Lisa Stone spoke for the plaintiffs and all concerned in expressing the hope that Yale would understand the need to settle for an adequate grievance procedure soon. "It seems so obvious," she said,"and so much more sensible than a lengthy and expensive trial, which would only get more and more embarrassing to Yale."

[END]

Yale Undergraduate Women's Caucus
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The reason I am in this case is, as Mason once said to Dixon, to draw the line somewhere. I am not claiming to have been raped or subjected to grade bribery. Everyone knows that rape is not OK; we all agree that grade bribery is not OK. What happened to me, however, is also not OK. It just happens often enough that people don't think seriously about it. They pass it off as a little male fun and, therefore, trivial. But sexual harassment is not trivial. The line of what is OK and what is not OK is how this "male fun" affects the woman, as well as its ethicality and legality. No one should have the institutionally sanctioned right to sexually harass a woman or anyone in any way, shape or form. Especially not a hierarchical superior. That is where I draw the line.

Margery Reifler 21 December 1977

New Haven, Connecticut

--STATEMENT--

In November, 1977, I petitioned the Federal Court to become a plaintiff in the pending suit, Alexander vs. Yale, publicly known as the sexual harassment case. I petitioned the court for redress on two counts in the absence of any effective action being taken by Yale University to investigate my complaint and/or to offer relief. The two counts are inextricably linked, the one being the direct result of the other. On the one hand, I was sexually harassed by a professor employed by the defendant; on the other, I received a grade unreflective of the merit of my work at that time which can and/or will possibly irrevocably damage my career opportunities. On both counts I remain unsatisfied as to the nature and the extent of the action taken by Yale.

The primary issue on both counts is one of sexual discrimination. I entered Yale University in the fall of 1974, aware of its reputation as a bastion of male supremacy. Like most freshman and undergraduates in general, I did not take that reputation seriously. Yet, my experience over the next two years proved the reputation well earned in the past and in too many cases perpetuated in the present. In too many instances, I was subjected to the assumption of my inferiority as a black person as well as the assumption of my lack of seriousness as a woman. The particular incident which brings me here today was only a reflection of assumptions perpetuated and reinforced by the failure of Yale University to confront and effectively deal with the issue.

The issue is that as a woman student at Yale I am subject to prejudicail judgements prior to the beginning and completion of my course of study. The issue is that some, acting upon archaic and feudal assumptions, will attempt to compromise my respect for myself as a human being (i.e., as more than a sex object). The issue is that professors particularly are in a position of power; whether or not and how I will complete my education is determined as much by them as by my own efforts. Their position is totally based on the legitimacy granted by the institution which employs them. As such, that legitimacy should be restructured to more appropriately meet the needs of the students, male and female. More important, what is and is not legitimate in the relationship between the professional and his/her student should be defined by the institution which confers that legitimacy. Yale University has not only failed to confront and accept that responsiblity in any systematic manner, it accepts, upholds and defends the right of a professor to act in a manner detrimental to a student's education. (i.e. by a pattern, practice and policy of neglecting and refusing to process and consider seriously complaints of sexual harassment of women students).

That detriment can be manifested in various ways, each of which intimately connects a woman's intellectual growth, both to herself and others, to a man's judgement of her sexuality. In my particular case, this detriment has manifested itself not only in terms of my

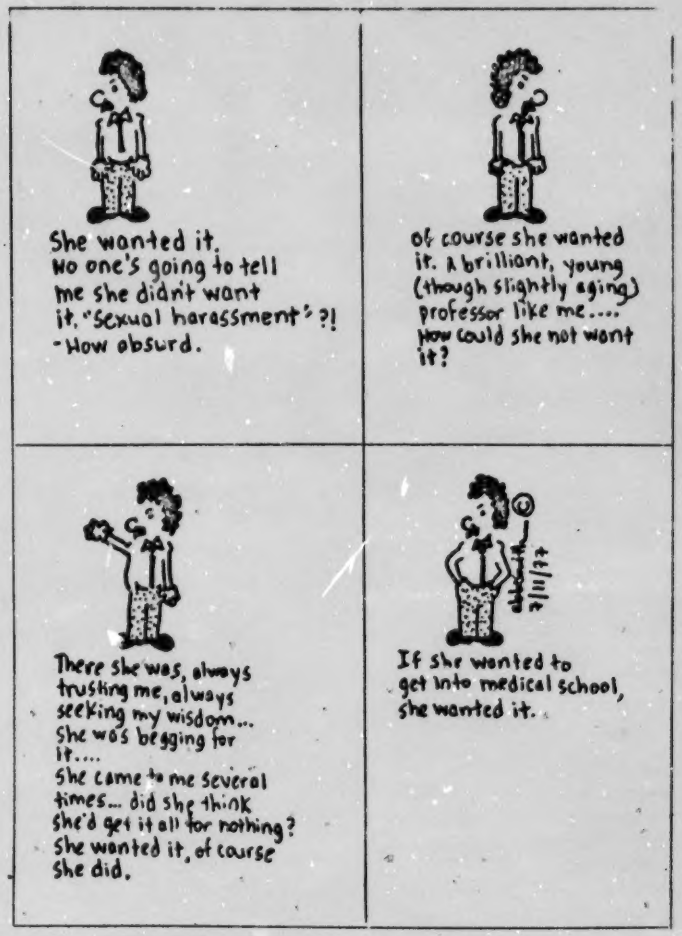
own intellectual development but also in the form of a concrete obstruction to my educational advancement. I received a grade which is a reflection of the professor's personal defects rather than the quality of my work. This grade is a concrete expression of his racist and sexist appraisal of me as a person -- in my case the one attitude is inherently linked with the other. This grade not only excludes an evaluation of the quality of my work, it includes a historical conception of the relationship between my racial heritage and my sexuality. I am offended on both counts.

At this point, the arbitrary nature of the grade threatens my educational advancement beyond my relationship with Yale. It can and will have a substantial impact on my chances of being accepted at the law school of my choice. Not only must I strive to overcome the general racist and sexist attitudes prevalent in society, I must also deal with a specific manifestation of those attitudes on a very personal and individual level.

Hence, it becomes clear that the acceptance of that grade with no investigation whatsoever of the circumstances surrounding which it was given, requires an assent to sexual harassment and racism not only at Yale University but also in the attainment of my own academic goals. While others may be prepared to give their assent, I cannot in all reasonableness give mine. Consequently, I have petitioned the court not only to require the establishment of a procedure within the university to <u>effectively</u> deal with these issues, I have also requested that the offending grade be temporarily removed from my transcript until this matter is resolved. As the transcript is crucial to my application to law school (which must be made soon), unless immediate and effective action is forthcoming it will be too late. Six months from now, the grade will have no effect upon my admission to law school in 1978. Now it could mean everything. Yale's failure to deal in any systematic and effective manner with the issues raised by this suit and numerous complaints from women at Yale, and the invocation of the "sanctity" of the grading procedure and of this grade in particular, reflects a completely inadequate and repressive perspective on the position of women within the university. It follows that this perspective serves to condone, uphold and defend a practice of racist sexual discrimination and consequently subordination of women not only within the University, but within the society as a whole.

Pamela Price 21 December 1977
New Haven, Connecticut

March 1978


She wanted it. No one's going to tell me she didn't want it. "Sexual harassment"?! -How absurd.
Of course she wanted it. A brilliant, young (though slightly aging) professor like me.... How could she not want it?
There she was, always trusting me, always seeking my wisdom... She was begging for it.... She came to me several times... did she think she'd get it all for nothing? She wanted it, of course she did.
If she wanted to get into medical school, she wanted it.

Dear Friend:

What is the price of a woman's education? We are asking your support to help insure that it will no longer include sexual harassment by male professors.

Alexander v. Yale is a landmark lawsuit charging that Yale University condones the sexual harassment of women students in violation of Title IX*. The plaintiff was offered an "A" in a course in her area of specialization if she would comply with her professor's demands. She flatly refused and walked out of his office. She complained orally and in writing to responsible Yale officials even before the grade of "C" was given. Because she is a black woman, her complaints were not only viewed as inconsequential, but were ignored more blatantly than complaints of white women. Not until one and a half years later, after *Alexander v Yale* was filed, did Yale act. Officials then claimed to review the grade, but ignored the sexual incident entirely. The grade was not changed.

The lawsuit asks for a grievance procedure as a remedy and preventive measure, not for damages from individual offenders. With a procedure, the responsibility for abuse of faculty power will remain within the University, but students will be guaranteed an effective channel for complaint for the first time.

Sexual harassment ranges from sexual propositions and pressures for intimacy to molestation and rape. Sexual harassment in education is particularly oppressive because of faculty power over student grades, recommendations and eventual employment and careers. Sexism makes higher education a difficult experience for women. Sexual harassment threatens and can destroy women's intellectual autonomy and opportunities for advancement.

Legally, the case has already won major victories for women students across the country. Magistrate Latimer, in his decision on Yale's Motion to Dismiss, held that sexual harassment is sex discrimination and that the plaintiff can sue a private institution under Title IX. Connecting sexual harassment in education with employment, he stated:

> . . . it is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimintion in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment. . .
>
> He held institutions responsible when victims complain to officials who fail to act.

Politically, the case connects women's education with fair treatment for women workers. It has stimulated widespread organizing and consciousness-raising on campus. It unites black and white women against a common expression of their subordination. It allows supportive men to ally themselves with women against this form of male domination.

Before the suit was filed, a group of concerned women from the Yale Undergraduate Women's Caucus asked the administration to investigate complaints of sexual harassment and to take appropriate action. Since

* Title IX of the Education Amendments of 1972 (20 U.S.C. §1681)

the case was filed, the Grievance Committee has been investigating the scope of the problem, educating the University and New Haven community about it, and working to establish a grievance procedure. We are organizing student, faculty and staff support for the suit, and raising money to fund it and our other activities.

What is the price of this lawsuit? This attempt to challenge the policies of a wealthy university has cost thousands of dollars in expenses and lawyers fees—and the bulk of the work is yet to come. We need your help. The Grievance Committee has raised some money and is planning benefits. But this will cover only a fraction of the costs. We need your financial contribution to continue our fight against Yale's defense of the power of male professors to sexually harass us. We attend college to study, not to be playthings or sex objects for male faculty members.

Your contribution will support the next steps the lawsuit requires and enables the Grievance Committee to continue its organizing. Tax deductible checks may be made out to The Capp Street Foundation and returned in the enclosed envelope.

If you would like more information about the lawsuit, the Grievance Committee or The Capp Street Foundation, please contact us at the above address.

Sincerely,

Phyllis. L. Crocker

Phyllis Crocker for the
Grievance Committee of the
Yale Undergraduate Women's Caucus

---------- TEAR OFF ----------

Yes, I want to support *Alexander v. Yale*, the sexual harassment lawsuit. Enclosed is my donation of _____.

Name _____

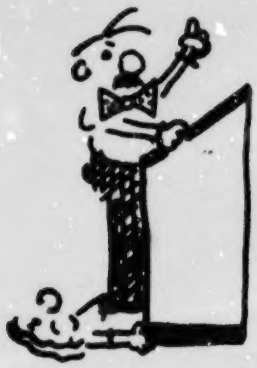
Street _____

City _____ State _____

Please send me more information on:

_____ *Alexander v. Yale*
_____ Grievance Committee, Women's Caucus
_____ The Capp Street Foundation

Sexual harassment at Yale?



It comes as a shock to most people. Maybe you read about it in the newspaper over the summer. Yale being sued for condoning sexual harassment of women students. Or maybe someone who knows you go to Yale asked you about it. "Does this really go on at school?" Probably you don't know much about it. Or you don't believe anything like this could go on.

Unless it's happened to you. Or a friend. Sexual harassment of women students by male faculty members occurs. It is a problem that has been long ignored. Often, it is not even seen as a problem. But it occurs not only here at Yale but at schools everywhere. The accounts of victims are numerous and disturbing.

Sexual harassment in <u>education</u> is particularly disturbing because of its effect on women's ability to learn. How can women students expect to get a thorough education if we cannot feel free to seek conferences with male faculty members because of fear of assault? The point is not that every male faculty member is "attacking" his female students. The point is that Yale has no procedure through which students can complain about sexual harassment. When it happens, it is allowed to go on unchallenged.

Women are denied an equal opportunity to learn from professors We must always be wondering whether our teachers are respecting us not for our academic performance-- but for our sexuality. This is not to say that faculty and students should not "socialize." But it is important to recognize the inherently unequal power relationship of faculty to students. When the unequal power relationship of men to women is added in, the female student's vulnerability to harassment is very great.

In this society, male harassment of females is the norm in many contexts. This lawsuit challenges that norm-- and the acceptance of sexual harassment.

We need your help. If you have any information-- or if you'd like to help by giving some time to the work being done-- please leave your name and telephone number below and give it to the person handing out this leaflet. Or take down these numbers and address: 562-7560/777-2265/4761 Yale Station. Or drop by the Women's Caucus office, third floor Hendrie Hall.

-- Thanks for your time.--

[Yale Undergraduate Women's Caucus Grievance Committee]

Alexander v. Yale fact Sheet

Alexander v. Yale is a landmark lawsuit charging that Yale University condones the sexual harassment of women students in violation of Title IX. The named plaintiff was offered an "A" in a course in her area of specialization if she would comply with her professor's sexual demands. She flatly refused and complained orally and in writing to responsible Yale officials even before the grade of "C" was given. Because she is a black woman, her complaints were not only viewed as inconsequential, but were ignored even more blatantly than complaints of white women. Not until one and a half years later, after Alexander v. Yale was filed, did Yale act. Officials then claimed to review the grade, but ignored the sexual incident entirely. The grade was not changed.

Alexander v. Yale is a class action suit against Yale as an institution because the issue is larger than the individuals involved. There are many other women who have found that their sexuality was a decisive factor in whether or not they could learn from a faculty member.

The lawsuit asks for a grievance procedure as a remedy and preventive measure, not for damages from individual offenders. With a procedure, the responsibility for abuse of faculty power will remain within the university, but students will be guaranteed an effective channel for complaint for the first time.

Sexual Harassment

"The issue is that some, acting upon archaic and feudal assumptions, will attempt to compromise my respect for myself as a human being (i.e. as more than a sex object).
Statement, Pamela Price, December 21, 1977

"You begin to wonder about the intentions of a Director of Graduate Studies who spends more time patting your thighs and pinching your rear than discussing your academic career."
A graduate student quoted in Alice Dembner, "A Case of Sex Discrimination," Yale Graduate Professional, March 6, 1978

"It is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment."

United States Magistrate Arthur Latimer, Ruling on Yale's Motion to Dismiss, December 21, 1977

"A woman who attempted to complain through university channels now faces the possibility that the man she complained about will be rehired without an investigation into her allegations. 'I tried the Yale channels for a year, I played their game, and now I'm angry. Nothing has been done and I am not the only one who has complained about this man."

Dembner, Yale Graduate Professional

"Yale's failure to deal in any systematic and effective manner with the issues raised by this suit and numerous complaints from women at Yale, and the invocation of the 'sanctity' of the grading procedure and of this grade in particular, reflects a completely inadequate and repressive perspective on the position of women within the university. It follows that this perspective serves to condone, uphold and defend a practice of racist sexual discrimination and consequently subordination of women not only within the university, but within the society as a whole."

Statement, Pamel Price, December 21, 1977

Support

On December 21, 1977, United States Magistrate Arthur Latimer decided that one of the plaintiffs has the legal right to continue the suit against Yale university for sexual harassment in federal court; we now face a possibly long and costly court battle to determine whether Yale in fact is legally responsible to her and the class of women she represents. Your support would be greatly appreciated. Checks can be made out to the CAPP STREET FOUNDATION for a tax deductible donation. Send donations to the Yale Undergraduate Women's Caucus, Box 4761 Yale Station, New Haven, Connecticut 06520. The Caucus will also provide more information on request.

Alexander v. Yale

On July 7, 1977 four female undergraduates and one male professor filed a class action suit against Yale University charging that the university condones sexual harassment of its women students and that this constitutes sex discrimination in violation of Title IX. It is a class action suit because the issue is larger than the individuals involved; sexual harassment of women students is widespread enough to warrant the setting up of a grievance procedure to deal with the problem. In fact, as news of the investigation leaked out, the number of reported complaints snowballed. The plaintiffs estimate that 75 undergraduate women (out of 2000) are sexually harassed each year.

What are the charges?

Plaintiff 1 alleges that she was forced to have sexual relations with her professor which made it intolerable to continue studies necessary to her career goals.

Plaintiff 2, because of the lack of an adequate procedure, was forced to waste time, effort, and money investigating the matter and demanding relief.

Plaintiff 3 had a friend who was sexually harassed; her distress increased upon being convinced that there was no avenue for complaint. This experience damaged Plaintiff 3's confidence in her male professors and the university, hindering her ability to take advantage of the educational opportunities at Yale.

Plaintiff 4 is a faculty member who contends that the atmosphere of sexual harassment poisons faculty-student relationships and stands in the way of a proper learning environment.

One of the original undergraduate plaintiffs ended her status as a plaintiff because she did not feel she could fully participate in the case while on a Leave of Absence during the present academic year. She was also concerned about her vulnerable position as an undergraduate while involved in a controversial suit.

Two undergraduate women, beyond the original plaintiffs, have asked the court for permission to join the suit.

Plaintiff 5 alleges she was sexually harassed by the coach of the athletic team on which she was participating. As a result of the experience she is no longer participating.

Plaintiff 6 alleges she was offered a higher grade in return for sexual relations with the professor. When she refused she received a lower grade.

What do we want?

We want a proper grievance procedure. We have been asking the university for many months to set up a committee that would deal with complaints of sexual harassment. This committee would decide the validity of complaints and appropriate action to redress injuries.

What are the issues?

1. Sexual harassment is sex discrimination, whether in education or employment. In our society, where women as a group have a disproportionately smaller share of the wealth, power, and advantages than men as a group, sexual harassment, by imposing sexual criteria on women that are not imposed on men in similar situations, creates a barrier to women's opportunities for and access to resources that would allow them to improve their situation.

2. Women are sexually harassed because they are women. They are singled out for disadvantages for no reason related to performance on the job or potential as a student. Yet, their refusal to comply sexually often results in educational or occupational deprevations.

3. Yale's refusal to investigate the problem or to establish a grievance procedure condones sexual harassment. Women come to Yale and other colleges to study. They should be treated as scholars and human beings--not as playthings or sexual objects for the faculty.

4. The right of a private individual to sue in Federal District Court for enforcement of Title IX is important because H.E.W. is understaffed, overworked, and very slow, as a rule, in investigating complaints. W.E.A.L. and N.O.W. L.D.E.F. have filed as amici cuiriae (friends of the court) supporting the plaintiffs' private right of action under Title IX.

Suing Yale is very expensive. Since it is in the university's interest to prolong the case and drain the plaintiffs' resources, it will probably become more expensive. We desperately need money. Please make checks out to the CAPP STREET FOUNDATION. Send checks to the Yale Undergraduate Women's Caucus, Box 4761 Yale Station, New Haven, Connecticut 06520. The Caucus will also provide more information upon request.

FACT SHEET ON ALEXANDER V. YALE (THE SEXUAL HARASSMENT CASE.

There have been a lot of words thrown around about the "sexual harassment" case against Yale, both nationally and locally. It is time to give the plaintiff's side of the case.

Alexander v. Yale is a class action suit against the university charging that Yale condones sexual harassment of its women students and that this constitutes sex discrimination in violation of Title IX. It is a class action suit because the issue is larger than the individuals involved; sexual harassment of women students is widespread enough to warrant the setting up of a grievance procedure to deal with the problem. There have been many other women who have found that their sexuality was a decisive factor in whether or not they could work with a faculty member. In fact, as news of the investigation leaked out, the number of complaints reported snowballed. Some people have suggested that a woman who is smart enough to get into Yale should be smart enough to be able to avoid sleeping with her professors involuntarily. THAT IS NOT THE POINT. Such pressure does not belong in an educational setting.

WE ARE NOT SUING THE INDIVIDUAL PROFESSORS FOR DAMAGES. We are simply demanding that Yale set up a workable and effective grievance procedure. Setting up such a procedure would settle the suit.

What are the charges?

Plaintiff 1 alleges that she was forced to have sexual relations with her professor in order to continue studies necessary to her career goals.

Plaintiff 2 was forced to waste time, effort and money investigating the matter because of the lack of an adequate procedure.

Plaintiff 3 is suing because of a friend who was subject to sexual harassment. The friend's experience diminished Plaintiff 3's confidence in her male professors and this hindered her ability to take complete advantage of the educational opportunities of the university.

Plaintiff 4 is a faculty member who contends that the atmosphere of sexual harassment poisons faculty-student relationships and stands in the way of a proper learning environment. 05

What do we want?

We want a proper grievance procedure.. We have been asking the university since last April to set up a committee that would deal with complaints of sexual harassment. This committee would decide the validity of complaints and appropriate actio to redress injuries.

Why is it necessary to go to court?

THE PLAINTIFFS NEVER WANTED TO TAKE THE CASE TO COURT. They did so only after exhausting all available options. The plaintiffs have never been interested in the public discussion of this case and the issues it raises turning on the personalities or individuals who may have been involved in specific incidents. They have conscientiously tried to limit publication of any names and specific details of the allegations. The high personal cost of the lawsuit, both to the plaintiffs and to the other individuals involved, only highlights the need for Yale to provide some other way to deal with this problem.

WE ARE NOT SINGLING OUT YALE UNIVERSITY AS AN EXCEPTIONAL HARASSER OF ITS FEMALE STUDENTS. We recognize that harassment probably occurs on all campuses, and is not confined to education; sex discrimination in the form of sexual harassment also occurs in employment situations. But we are directly affected by the sexual harassment that does occur at Yale and by the reluctance of the university to investigate the problem.

The university did not respond to our request for a grievance procedure. We had no other recourse but to file suit. Yale can end the suit very easily by granting us that grievance procedure.

For more information please call: 562-7560 or 777-2265
or write to: The Grievance Committee of the Yale Undergraduate Women's Caucus, 476 Yale Station; New Haven, Conn. 06520

JUL 2 0 1978

Yale Undergraduate Women's Caucus and Grievance Committee

The Yale Undergraduate Women's Caucus began as an organization of six women in September 1974. Since that time our membership has grown to include nearly two hundred members of the Yale community. As the Caucus has grown in size we have retained a primarily horizontal organization where members work co-operatively toward common goals. We are committed to educational, cultural, and political actions around issues of importance to women at Yale.

As an educational organization the Caucus is primarily concerned with bringing women's issues and problems to the attention of the Yale community. Our activities include: panel discussions("Does Feminism Address the Needs of Women?," Fall, 1977; "Women and Politics," Spring, 1978); consciousness-raising groups; self-help groups and Women's Studies discussion tables.

As a cultural organization, we provide opportunities for women to be together in an enjoyable, relaxed atmosphere. These events include art shows, poetry readings, films, and open houses. The Caucus shares a "Women's Space" with five women's organizations on campus which is a center for our cultural and educational activities.

As a political organization the Caucus works within Yale on issues of concern to women. A summary of our political efforts includes: admissions; Affirmative Action; gynecology; security; women's athletics; and women's studies. Our political purpose is clear: to promote the position of women at Yale, thus eliminating institutional and attitudinal sexism.

The Grievance Committee was formed in March, 1977 to make the Yale community aware of the problem of sexual harassment of women students by male faculty members. No university committee or grievance procedure exisits to address this problem. Our primary goal is to have the university establish an official grievance procedure specifically for sexual harassment. Toward this end we are lobbying within the university for a grievance procedure and supporting the present class action suit in Federal District Court in New Haven.

Our work currently centers around increasing financial, political, and moral support for the lawsuit. Campus organizing has focused on three areas; 1. disseminating information about the suit by sponsoring discussion sessions in the residential colleges and distributing fact sheets, 2. generating broad support for the establishment of a grievance procedure by conducting a college-wide petition drive, organizing a faculty support committee and soliciting support from campus organizations, and 3. encouraging the formation of and participating on the Yale College Dean's Advisory Committee on Grievance Procedures. Members of the Grievance Committee have written articles and editorials for university and community newspapers on the specifics of the suit as well as the larger issue of sexual harassment in education. In addition to our work on the Yale campus we have appeared on radio and television talk shows and have spoken to groups in the community and at other colleges. Our fund-raising efforts include selling tee-shirts, inviting individuals to give benefit performances or speeches, and asking foundations as well as individuals for contributions. During the past year Dick Gregory, Robin Morgan and Marge Piercy are among those who have given benefit speeches or poetry readings for Alexander v. Yale.

NOI-7

from the Yale Graduate Professional March 6, 1978

A Case of Sex Discrimination

Alice Dembner

A female graduate student works closely with a male professor in her department. She is writing her thesis on an aspect of theory he has pioneered. After a year of flattery and pursuit, she enters an affair with him, which runs pleasantly for several months but ends abruptly.

The professor agrees to continue serving on the student's dissertation committee, believing he can keep personal and professional matters separate. Several months go by, during which they correspond about the dissertation by letter. The student passes up several seminars related to her work that are taught by the professor, because she feels uncomfortable around him. The professor suddenly withdraws from the dissertation committee and refuses to help the student in her search for a job in industry. The student must now explain to her colleagues and prospective employers why she is not working with the man at the forefront of her field. She speaks with other women in the department and finds he has attempted to seduce them. Can she charge him with sexual harassment?

A homosexual male student is propositined by a male professor and responds negatively. No overt threat regarding the student's grade is made, but the student feels he must do additional work - beyond course requirements - to get the grade he had originally expected. Is this sexual harassment?

These two incidents, changed slightly to conceal the identity of those involved, are typical of the kinds of sexual harassment that occur in academia. Sexual harassment is a problem that has been largely ignored by the University community, but it is one that affects the lives of many students and faculty members.

One of the few scholars of sexual harassment, Catharine MacKinnon, wrote this definition in a paper for the Yale Law School entitled *Sexual Harassment: A Case of Sex Discrimination*. "Sexual harassment...may occur as a single encounter or as a series of incidents...It may place sexual conditions upon...opportunities at a clearly-defined threshold...or it may occur as a pervasive or continuing condition of the...environment...Examples include: verbal sexual suggestions or jokes, constant leering or ogling, brushing against your body accidentally,' a friendly pat, squeeze, or pinch, catching you alone for a quick kiss, the indecent proposition backed by a threat and forced sexual relations. Complex cases are posed by the persistent innuendo and by the continuing threat which is never consumated either sexually or (otherwise). The most straightforward example is 'put out or get out.'"

Sexual harassment within the student-teacher relationship can occur between a male faculty member and a female student, a female professor and a male student, a female student and a female professor, or a male student and a male professor. Because most faculty at Yale are men and because heterosexuality is the norm in our society, the harassment of female students by male faculty members occurs most often.

There are cases which are undeniably harassment and cases which might have arisen out of genuine misunderstanding. However, it is the professor who has the power in the relationship, and it is the professor who has the responsibility to maintain professional standards.

Across the country, a number of lawyers have argued for redress of retaliation taken against women in instances of sexual harassment. In many cases, the courts have accepted their arguments that sexual harassment constitutes sex discrimination. In July 1977, the US Court of Appeals for the District of Columbia, the most influential court that has heard the issue, ruled that women were protected from retaliation upon repulsing employers' sexual advances under the Equal Opportunity Employment Act of 1972.

In the case, Alexander v. Yale, which made sexual harassment an issue on the Yale campus, the presiding magistrate ruled that sexual harassment in academia is sex discriminatin under Title IX of the Education Amendments of 1972. "It is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's (of the Civil Rights Act of 1964) ban against sex discrimination in employment."

Sexual harassment has existed at Yale as a barrier for women students since at least 1971. That year, a coalition of university women's groups, including the precursors of the Undergraduate Women's Caucus and the Women's Forum, compiled a report, documenting

occurred at Yale in the last few years. They raise some of the complex issues involved in sexual harassment in education which are being considered by the courts, by universities around the country, and by the new Yale committee on grievance procedures.

What constitutes sexual harassment of students by faculty? What is the dividing line between consentual sex and coerced sex when there is an inherent power differential between the two parties? Must there be an overt threat? Must there be retaliation? Must the student reject the proposition to claim that harassment has occurred? Do there have to be repeated advances, or is one sufficient? Is it enough for a student to feel harassed or must there be clear verbal or physical advances before an investigation is started?

Various members of the Yale community offered a number of definitions for sexual harassment. Although the interpretations varied widely, all included the abuse of the power that faculty have over students.

Ezra Stiles Dean James Rush suggested that sexual harassment was the "deliberate exploitation of authority of one person to request sexual favors on the part of another." Etta Onat, Associate Dean of the Graduate School offered a broader definition. "Sexual harassment can be blatant or subtle, ranging from a proposition or an advance to a lack of tact in describing women

power.

It is only recently that people have begun to talk about sexual harassment in these terms. Until two years ago, the problem was rarely discussed openly and seldom considered a problem which had solutions. Like the birds and the bees, sexual harassment was for women a fact of life. In MacKinnon's words, everyone has "understood and dismissed such incidents as trivial, isolated, and 'personal,' or as universal 'natural' or 'biological' behaviors."

"There's no difference in the amount of harassment that occurs in business and academia." Studies indicate that seven out of ten women have been harassed on the job.

In 1975, the Working Women United Institute now in New York City, held a "speak-out" for women who had been sexually harassed at work. Since then, they have organized a national litigation project, a handbook for working women, and a resource library. They conduct ongoing research and plan to provide support services for victims. The Alliance Against Sexual Coercion, a group formed recently in Cambridge Massachussets,

numerous ways in which women who worked and studied at Yale were discriminated against. Sexual harassment was one of the areas covered.

One graduate student talked about the harassment she faced in the admissions process: "When I came to Yale to show my portfolio, a requirement for admission to the department, I did not realize what was going to happen. When I had finished discussing the final picture with one professor, he asked me, 'Now, don't you have something else to show me?' and with that he grabbed me by the shoulders, as they say in Victorian novels." Another student had severe doubts about the profession qualifications of her DGS. "You begin to wonder about the intentions of a Director of Graduate Studies who spends more time patting your thighs and pinching your rear than discussing your academic career."

The women also complained officially to the Department of Health, Education

and Welfare about these discriminatory practices. Their proposal for an Affirmative Action program included this statement: "A Women's Bureau shall be established to investigate all grievances of sexual harassment which inhibit the full participation of women in the professional community." The suggestion was never implemented. Though HEW representatives came to Yale to investigate, they could do nothing about the sexual harassment of students by faculty. The Educational Amendments banning discrimination in federally funded educational institutions were not passed by Congress until 1972.

In 1975-76, sexual harassment was discussed at a meeting of the residential college deans. According to Morse Dean Eva Balogh, former JE Dean Williamson Murray brought up the topic, stating that sexual harassment of women students - especially by TAs - was a severe problem, and that something should be done. The current dean of JE Mark Ryan was also present at that meeting. He remembers a discussion about issuing a statement to the faculty condemning the practice of sexual harassment. Most of the deans did not like the idea and the matter was dropped.

About the same time, a department chairman faced with a number of complaints about a particular TA's behavior, warned other department members that anyone caught harassing a student would be dismissed. The TA in question was fired.

The first recent reports of widespread harassment came from the Women's Caucus in their *Report to the Yale Corporation* published last spring. "It is not uncommon to hear complaints by women students of being propositioned by Yale faculty members," the report reads. A detailed description of an incident followed. The Caucus tried to help several

from page one

only a segment of the total that occurred. Donna Schaper, Associate University Chaplain, believes that "there's no difference in the amount of harassment that occurs in business and academia." The figures quoted for the work force, based on several studies, indicate that seven out of ten women have been harassed on the job at some point in their career.

Many students don't report that they have been harassed for the same reasons rape victims often don't report. They find the situation embarassing and extremely discomforting; they would rather try to forget that it happened.

Other students do not complain because they think their case is an incident which they may have invited in some unspecific way. "Even though I hadn't done anything to provoke him, when he began to make advances. I kept wondering if I had been suggestive," said one woman who eventually complained.

Her case involved a professor who never really propositioned her. While taking a class with him, however, he continually made suggestive comments and advances. After these were openly rejected, he refused to see her when she needed advice on a project. As in the case cited earlier, the professor in question was the only person at Yake in a particular subdiscipline. The student suffered emotionally for several months and says she might still be suffering if her dean and the TA for the course hadn't been so supportive.

Some students are too confused by their feelings about an incident to complain. They are flattered that an older and eminent professor would be sexually interested in them. Yet, they lose some respect for the professor due to his advances. Offers of rewards--better grades, recommendations--further complicate the situation. Will the professor use these re-

Adequate Procedures?

Administrators and faculty disagreed about whether a procedure exists and whether it is adequate. Several professors denied that the procedure described in the undergraduate regulations is a procedure at all. A few faculty members and college deans feel that the mechanisms exist but are inadequate. "What exists now is unsatisfactory," says Dean Onat. "It relies too much on individuals." Many people feel that the master-dean mechanism has not yet been proved ineffective, but that if a group of students strongly want a more formal procedure, it should be designed and implemented.

Several professors also feel that a more formal grievance procedure is necessary to protect the faculty. They feel that there is always a potential for false accusations from students who attempt to seduce them or consensual relationships which break up. However, Donna Schaper, the Associate University Chaplain, claims "There is no reason for a woman to accuse a man of sexual harassment if it is not true. It can only backfire on her."

Most people agree that the master-dean channels need to be better publicized. The procedures seem clear, says Calhoun Dean Eustace Theodore. The problem is that students may not read the sources of information on those procedures. As Kingman Brewster once said, "The two least read books on the Yale campus are the *Report of the President* and the *Undergraduate Regulations*."

The *Undergraduate Regulations* read: "If a student in Yale College believes that someone acting for the University has behaved towards the student in a way that is improperly based upon considerations of race, color, religion, sex, or ethnic or national origin, the student should normally first discuss the problem

women bring complaints against offending professors. They claim that the administration was unsympathetic and unresponsive. In July, several women filed the current law suit in order to change university policy regarding harassment.

A poll of the residential college deans, the Chaplain's office, the University Health Service, and the central dean's office yielded a tally of about 30 complaints lodged over the last few years. The complaints varied in form from written statements to confidential confessions, and covered a range of alleged offenses. A similar poll of a small group of 7 faculty members revealed 20 cases. Only Calhoun Dean Eustace Theodore and TD Dean James Davie received conplaints from men about harassment by male and female professors, though other professors and deans indicated that they had heard of some such cases. Almost everyone agreed that the number of reported cases of harassment was probably

continued on page seven

wards as weapons to punish her if she refuses his advances and double the retribution if she complains? Will she then have a reputation as a troublemaker among the professor's colleagues? The consequences of complaining can extend beyond the uncomfortable situation that is created in a woman's working relationships as an undergraduate. Students fear that complaints will damage their chances for admission to graduate or professional school.

For graduate students, the factors keeping women from filing complaints are even more severe. Dean Onat, the sole female administrator in the graduate school, and the Title IX officer has never received a formal complaint. Graduate students know it is "suicidal to complain about almost anything," said Cherri Waters, a student in the political science department. Diane Ross, a graduate student in English, felt complaints about sexual harassment were a particular problem. "A student making a major complaint would expose herself in a way that's more harmful than harassment. The complaint could have a much more profound effect on your future and the focus of your education than the instance of harassment."

Students may not complain because they do not know whom to go to, what the consequences of complaining are likely to be for themselves or the person they are accusing, and whether their complaints will be taken seriously. Despite the recent publicity about the existing University grievance "procedures," both graduate and undergraduate students still do not know who to complain to.

with the person complained of, but may also seek advice on how to secure an equitable solution of the problem from the Masters and Deans of the Residential Colleges, the Chairman of the Yale College Executive Committee, or the Associate Dean for Student Affairs. If the problem can not be resolved by informal discussion, the person or persons to whom it is referred shall assure that the complaint is reviewed by the appropriate authorities and/or established procedures."

The "appropriate authorities and/or established procedures" evidently are Dean Taft. In a *Yale Daily News* interview, Taft says "If the action is believed to be true and is an action that the Dean of Yale College should know about, then the incident should be brought to my attention. I would talk to the student and the faculty member involved and try to make a determination if, in fact, the situation required action. If it did, we would have to consider faculty disciplinary procedures which would probably parallel those set forth by the American Association of University Professors."

On the graduate level, the procedure is similar. Students should complain to their advisor, their DGS, their department chairman, Dean Onat, or Dean Pelikan.

Some students who have used these procedures seem satisfied. For example, the woman who refused her professor's advances and then was ignored by him, is confidant that the professor will be asked to leave Yale. Other students claim the procedures are ineffective. Pamela Price, the remaining plaintiff in the lawsuit, says she complained about the harassment incident to her dean, to the department chairman, and to the director of the Afro-American Cultural Center and was told nothing could be done. A year

and a half later, after the suit was filed, but before she joined it, the university asked her to resubmit the complaint. They then investigated the incident by giving the paper on which the disputed grade was based to two professors in her department. They reread the paper and decided that it merited the "c" that it had received. They did not investigate the circumstances of the incident, in which Price was told that she would get an "A" if she slept with the professor, but simply told her that the matter was settled. Price is suing because she does not think that the university adequately handled her complaint.

Another woman who attempted to complain through university channels now faces the possibility that the man she complained about will be rehired without an investigation into her allegations. "I tried the Yale channels for a year, I played their game, and now I'm angry. Nothing has been done and I am not the only one who has complained about this man."

No Morals

During her second year of music lessons with a particular teacher, he began to lock his office door during the session. He would approach her, kiss her ear, and comment on her figure. He sais several times that he had no sexual morals and could not understand his wife's discomfort about his involvement with other women. During one lesson he took out a conductor's score to show her and "found" a Playboy foldout in the center. As a result of these incidents she began to feel "incredible emotional pressure from him." She dreaded practicing for her lessons. When her teacher asked her why she was so nervous, she did not have the courage to tell him, knowing from other students how vindictive he could be. She began to have nightmares about being sexually molested by him. She switched teachers and later filed a complaint.

Faculty and administrators agree that disciplining of faculty members proved to have harassed students would have to proceed according to AAUP guidelines. The sanctions would depend on the offense, but could range from reprimand to dismissal. Repeat offenders would be disciplined more severely. To date, according to Dean Griffin, no faculty member has ever been explicitly dismissed for misconduct though several have been quietly asked to leave.

Avoiding Faculty Suits

The entire procedure would have to be conducted carefully and confidentially, to avoid possible lawsuits arising from incorrect proceedings. New York University Law School is currently faced with such a suit by a professor who claims he was forced to resign because of false rumors that he has sexually harassed female students. He charges that he was unfairly excluded from an investigation of the allegations against him, and that the investigation damaged his reputation.

Even if a new procedure were designed and publicized, some faculty wonder if it would be used. Dean Davie doubts that it would. "There are mechanisms already which people don't avail themselves of," he said. He believes that people would be even less willing to go to a hearing officer or board than to their dean. Other deans feel that the mechanism might work best as the second step in a procedure where the front people were the deans. Nancy Cott, Assistant Professor of American Studies and Histoy, believes that, at the least, an established grievance procedure will make students freer to admit that harassment occurs, and therefore make them freer to complain to their deans.

Several people were concerned that informal procedures would disappear if formal mechanisms were established. Donna Schaper believes people should be free to choose informal proceedings if

Donna Schaper suggests other ways for women to deal with the situation themselves, if they do not want to report it: 1) Tell the professor that he has one month to leave you alone, otherwise you will try to get him fired; 2) Publicly embarass him in front of a small group of people who will be witnesses if he tries to retaliate; 3) Threaten to publicly embarass him by telling every person in the class what he is doing; 4) Ask a counsellor to go talk to him.

To prepare students to cope with the possibility of sexual harassment, Lorna Sarrel, co-director of the Yale Human Sexuality Program, plans to begin discussing sexual harassment in her talks with freshmen. The Grievance Committee of the Undergraduate Women's Caucus and the Faculty Support Group which has formed to work with them will continue their educational efforts.

Professors must also take more responsibility for their behavior, according to one dean. "The teacher-pupil relationship is a special one, and the kin of complication sexuality brings in, is not good," said Dean Davie. "Some people are inexperienced in handling difficult interpersonal relationships, and the university as a whole cannot tolerate the disruption in the teacher-pupil relationship which harassment causes."

Partially because of the lawsuit, which has been publicized across the country, sexual harassment in academia is becoming an issue. The Modern Languages Association Commission on the Status of Women in the profession is beginning a study on the sexual harassment of graduate students and academics.

Some schools are beginning to examine the incidence of harassment on their campuses. But, neither students nor faculty members at most schools are aware of more than a few cases. At the University of California at Berkely,

A number of questions have been raised about the form of an alternate mechanism. Should it be a committee, a hearing board, or an ombudsperson? To what extent should students be involved? What kind of disciplinary power should the procedure incorporate?

Judith Genova, a member of the philosophy department and the head of the Faculty Support Committee working against sexual harassment, suggests a two-part procedure. One committee composed of faculty, administrators, and students would receive complaints, investigate, and decide whether harassment had occurred but would the faculty discipline the offender. Dea Taft and Griffin, however, believe tha students should not be involved at all in decisions about faculty members. Students can advise during a fact-finding session but only faculty are qualified to judge faculty.

However, many of the deans and faculty feel that students should be involved in the entire process. The proceedings involve both student and faculty interests, and each party will keep the other honest. They also feel that students would be as likely to decide wisely and carefully as faculty. Dean of Student Affairs Marnesba Hill and Pierson Dean Rachel Wizner were particularly outspoken on this issue.

Dean Onat suggests a tribunal of disinterested people with members from each of the possible constituencies which would come before it. Dean Rush suggests using Associate Dean of Yale College, Judith Brandenburg, as a hearing officer.

they "don't want to fight other people's battles." Several graduate students also felt strongly about this. Informal proceedings, however, tend to be decentralized. And when incidents are not reported to a central place, it is difficult to catch repeat offenders.

Saying 'No'

Some members of the university community feel that grievance procedures are not enough. They believe that women must be taught to confront the situation, and learn to say "n" firmly. This is not as simple as it sounds. "In this environment, it is not always possible to say 'no,' said Dean Hill. "People want to do well academically and socially, not make enemies and 'F's'." Sometimes saying no will not stop the harassment. In the case of one of the original plaintiffs in the suit, Ronni Alexander, a 'no' was not enough. "He grabbed hold of me and began to fondle my breasts and kiss me. I was shocked, scared, and angry, but did not know what to do. I felt I needed him as a flute teacher, and hoped that he would respect my telling him that I was in no way interested in a sexual relationship with him. In fact, he would not take no for an answer."

Saying "no" can work only if the professor believes that a woman's "no" means "no." Too often in this situation as in others, a woman's word is not taken seriously. If the professor is interested in exerting his power as well as enjoying a physical relationship, however, then saying "no" may only lead to greater harassment.

however, a survey of 230 female graduate students revealed that 20 percent had received "sexual attention" from instructors. Of these women, 71.5 percent responded negatively and felt the incident infringed on their educational freedom. None of the women reported the incidents to university officials.

Clearly, administrators at Berkeley and at Yale could easily be unaware of the scope of the problem, and underestimate the need for effective procedures to combat it. Studies, public speak-outs, and lawsuits are necessary to bring attention to problems like harassment, which society would rather brush under the rug. Academia will only eliminate sexual harassment when it recognizes the severity of the problem and establishes explicit and effective procedures to act decisively against offenders.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

, on behalf of themselves and all others similarly situated, PLAINTIFFS	
VS.	
YALE UNIVERSITY, DEFENDANT	SECOND AMENDED COMPLAINT

INTRODUCTION

1. This is a class action for declaratory and equitable relief and money damages against Yale University. It is alleged that defendant discriminated against plaintiffs and members of their class on the basis of sex in education, in that its failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in education. These actions are in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., as hereinafter more fully appears.

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 20 U.S.C. §1681, and 28 U.S.C. §§1343, 2201, 1331. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

PARTIES

1. is a graduate of Yale College and a woman; is a student in Yale College, Class of and a woman; is a student in Yale College, Class of and a woman; is a graduate of Yale College and a woman; is a student in Yale College, Class of and a woman; is a member of the faculty of Yale University with responsibility for teaching and a man. All plaintiffs are citizens of the United States. Yale University is a corporation organized under a charter granted by the State of Connecticut. It is an institution of higher education which receives Federal financial assistance.

2. The plaintiffs bring this suit on behalf of themselves and all other similarly situated persons, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class is the class of those students and faculty at Yale University who are disadvantaged and obstructed in their educational relations by the policies, practices, acts and omissions of the University with respect to the sexual harassment of women students by men in positions of authority, in particular by male faculty members and administrators. There are three subclasses:

1. The class of all female students sexually harassed by men in positions of authority at Yale, including all female students who, since 1973, at present and in the future, have to choose

between toleration of, or compliance with, sexual demands and pressures by such men and any educational opportunity, benefit or chance to grow or advance educationally;

2. The class of female students who, since 1973, at present and in the future, are subject to the discriminatory atmosphere adverse to their educational development created by the practice of such sexual harassment, including but not limited to all students who have pursued complaints of sexual harassment and attempted to produce appropriate action by defendant, to their detriment;

3. The class of all faculty members whose professional effectiveness in teaching and in engaging in the pursuit of knowledge with students is seriously impaired by that contamination of the faculty/student relationship created by defendant's tolerance of said sexual pressures, which tolerance creates detrimental distraction in women students and generates an atmosphere of distrust unconducive to teaching and learning.

The class is so numerous that joinder of all members is impractical. There are questions of law or fact common to the class. The defendant has acted or refused to act on grounds generally applicable to the class. The class is fairly and adequately represented by plaintiffs herein.

COUNT I

1. Plaintiff Alexander entered Yale as an undergraduate in September, 1973.

2. At the time she came to Yale, plaintiff was a serious musician who anticipated majoring in music and playing the flute professionally.

3. In her first semester, plaintiff enrolled in the maintained by defendant for undergraduates interested in performing music, and took private flute lessons with the , an employee of defendant.

4. repeatedly made sexual advances, including coerced sexual intercourse, that were not wanted, and were protested, by plaintiff .

5. persisted in his intimidation and coercion of plaintiff , including sexual advances to her, continuing into May, 1977.

6. As a direct result of s sexual demands, plaintiff found it impossible to continue playing the flute and abandoned her study of the instrument, thus aborting her desired professional career.

7. As a direct result of s sexual demands, plaintiff , contemplated suicide and almost dropped out of Yale, both in December, 1974.

8. At the time of the said incidents, and again in May, 1977,

plaintiff attempted to complain to responsible Yale officials. On both occasions, she was discouraged and intimidated by unresponsive administrators and complex and ad hoc methods which inadequately substitute for a formal and legitimate administrative structure for complaints.

9. The experience of plaintiff as set forth above is the result of a pattern, practice, and policy of defendant, its officers, agents, and employees, of neglecting and refusing to consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

10. The above actions and policies of defendant and its agents and employees discriminate against plaintiff and members of her class on the basis of sex, in violation of 20 U.S.C.§1681.

COUNT II

1. Plaintiff Reifler entered Yale as an undergraduate in September, 1976.

2. In Fall Term, 1976, plaintiff became manager of the team.

3. In the course of her duties as manager, plaintiff worked with the coach of the team,

4. During the season, plaintiff was sexually harassed by while she was doing tasks that were her responsibility as manager of the team.

5. As a direct result of said sexual harassment, plaintiff suffered distress and humiliation, was distracted from her academic studies, was hampered in her work as team manager, and was denied recognition due her as team manager, all to her educational detriment.

6. Plaintiff wanted to complain to responsible authorities of defendant about said sexual harassment but was intimidated by the lack of legitimate procedures and was unable to determine if any channels for conplaint about sexual harassment were available to her.

7. The experiences of plaintiff , , set forth above is the result of a pattern, practice, and policy of defendant, its officers, agents and employees, of neglecting and refusing to process and consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

8. The above actions and policies of defendant and its agents and employees discriminate against plaintiff and members of her class on the basis of sex, in violation of 20 U.S.C. §1681.

COUNT III

1. Plaintiff Price entered Yale as an undergraduate in September, 1974.

2. In the Fall Term, 1975, plaintiff declared her major field to be

3. In the Spring Term, 1976, plaintiff enrolled in _____ taught by Professor then an employee of defendant.

4. Early in June, 1976, when plaintiff went to Professor office to submit her final paper for the course, she was sexually propositioned by Professor who offered to give her a grade of "A" in the course in exchange for her compliance with his sexual demands. He also remarked upon the effect of her physical appearance on him.

5. Plaintiff explicitly rejected and refused to comply with Professor sexual demands and left his office.

6. Shortly after said incident, plaintiff complained about it orally and in writing to responsible officials of defendant, including her college dean and the then director of the

7. At the time these complaints were made, she was told by responsible officials of defendant that nothing could be done to remedy her situation.

8. At the time of the plaintiff's complaints, no investiga-

tion of the incident was made nor was disciplinary action taken against Professor by defendant or by any of its responsible officers.

9. Plaintiff later received a grade of "C" in the course. The grade was not the result of a fair evaluation of her academic work, but the result of her failure to accede to Professor , sexual demands.

10. As the direct result of her explicit rejection of said sexual propositions, plaintiff suffered educational detriment. She has suffered distress, humiliation, has received a grade on her transcript that does not reflect the quality of her academic performance, and has been injured, and is continuously being injured, in her educational advancement and in the further pursuit of her career.

11. In September, 1977, responsible officers of defendant requested that plaintiff re-submit her complaint about the incident, which she did later in September, 1977.

12. After said resubmission, no investigation of the incident of sexual harassment was made, nor has the grade been changed.

13. Responsible officials of defendant have represented to plaintiff that nothing further will be or can be done about her complaint.

14. The experience of plaintiff set forth above is the result of a pattern, practice, and policy of defendant, its offi-

cers, agents and employees, of neglecting and refusing to process and consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

15. The above actions and policies of defendant and its agents and employees discriminate against plaintiff and members of her class on the basis of sex, in violation of 20 U.S.C. §1681.

COUNT IV

1. Plaintiff Stone entered Yale as an undergraduate in September, 1974.

2. During the course of the academic years 1974-1975, plaintiff best friend, another Yale undergraduate woman, became the subject of sexual pressures and attentions from an employee of defendant, and she discussed said incidents with plaintiff in the academic years 1974-1975 and 1976-1977.

3. Both the incidents themselves and the atmosphere in which they occurred caused plaintiff great emotional distress, but there was no established, legitimate procedure by which she could bring them to the attention of the responsible officials of defendant.

4. As a result of the said incidents and the absence of an established procedure by which she could bring them to the attention of responsible officials of defendant, plaintiff suffered emotional distress, was deprived of the tranquil atmosphere necessary to her pursuit of a liberal education, and was put in fear of her own associations with men in positions of authority at Yale.

5. The experience of plaintiff as set forth above is the result of a pattern, practice, and policy of defendant, its officers, agents, and employees, of neglecting and refusing to consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

6. The above actions and policies of defendant and its agents and employees discriminate against plaintiff and members of her class on the basis of sex, in violation of 20 U.S.C. §1681.

COUNT V

1. Plaintiff Olivarius entered Yale as an undergraduate in September, 1973.

2. During the academic year 1976-1977, plaintiff was an officer of the .

3. In this capacity, plaintiff had occasion to discuss with other female students their complaints about the quality of the education of women at Yale, including complaints of sexual harassment.

4. Plaintiff attempted to pursue such complaints, both formally and informally, with responsible officials of defendant.

5. In her attempts, plaintiff met with delays, aggressive uninterest, hostility and intransigence.

6. As a direct result of the lack of established procedures for recognizing and handling such complaints, plaintiff was forced to expend time, effort and money in investigating complaints herself, preparing them to be presented to responsible officials of defendant, and attempting to negotiate the complexities of ad hoc "channels." She was subjected to threats and intimidation from individuals involved in her investigations and was being given no protection or encouragement by responsible officials of defendant.

7. The experience of plaintiff as set forth above is the result of a pattern, practice, and policy of defendant, its officers, agents, and employees, of neglecting and refusing to consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

8. The above actions and policies of defendant and its agents and employees discriminate against plaintiff and members of her class on the basis of sex, in violation of 20 U.S.C. §1681.

COUNT VI

1. Plaintiff Winkler came to Yale as an Assistant Professor in the in July, 1974.

2. During his career at Yale, he has had responsibility for teaching undergraduates.

3. Early in the academic year 1974-1975, one of plaintiff female students discussed with him the sexual harassment to which her best friend, a major, was subjected by a male professor then in the

4. As a result of this discussion, plaintiff became aware of the problem of sexual pressure put on women students by male faculty members.

5. Plaintiff further became aware of the obstruction of his own teaching relations with women students, on account of the atmosphere of distrust male professors engendered by the reputation of certain male professors for sexually harassing women students.

6. Plaintiff has been unable to take any steps to alleviate the pressure this atmosphere places on his students, as there are no established procedures for bringing complaints of sexual harassment of women students by male professors and administrators to the attention of responsible officials of defendant.

7. As a result of the traumatic effects of the atmosphere of sexual pressure and demands upon women students and the absence

of established procedures for bringing complaints to the attention of responsible officials of defendant, plaintiff has had to try to teach in an atmosphere poisoned by distrust, and he has further been deprived of the benefit of teaching students who can devote their concentration to study and the student/teacher relationship.

8. The experience of plaintiff as set forth above is the result of a pattern, practice, and policy of defendant, its officers, agents, and employees, of neglecting and refusing to consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

9. The above actions and policies of defendant and its agents and employees, which have the effects on plaintiff set forth above, are the result of discrimination on the basis of sex, in violation of 20 U.S.C. §1681.

WHEREFORE, plaintiffs claim:

1. A declaration that the policies and practices of defendant, its officers, agents, and employees with respect to sexual harassment of women students are in violation of 20 U.S.C. §1681;

2. An order permanently enjoining defendant, its officers, agents, employees, successors, assigns and all persons in active concert or participation with them from engaging in practices and

implementing policies which discriminate on the basis of sex in educational opportunity;

3. An order permanently enjoining defendant from failing to have an established, legitimate mechanism for receiving, investigating, and adjudicating complaints of sexual harassment of women students;

4. An order permanetly enjoining defendant, its officers, agents, and employees from failing to take appropriate disciplinary action against

5. An order permanently enjoining defendant, its officers, agents, and employees from failing to take appropriate disciplinary action against

6. An order permanently enjoining defendant, its officers, agents, and employees from failing to take appropriate disciplinary action against

7. An order requiring defendant to institute and continue a mechanism for receiving, investigating, and adjudicating complaints of sexual harassment, to be designed and implemented under the supervision of this Court;

8. A preliminary order, requiring defendant not to discontinue any efforts it is making to investigate and change plaintiff grade in the course,

9. A preliminary order, requiring defendant to instruct recipients of plaintiff transcript to disregard the course, and the grade therein;

10. A preliminary order, requiring defendant to include the receiving and investigating of complaints of sexual harassment in the function of the office of the Dean of Women;

11. Compensatory damages in the amount of five hundred dollars ($500.00) for plaintiff

12. Attorney's fees and the costs of this action;

13. Such other and further relief as this Court deems necessary and proper.

PLAINTIFFS

BY _____

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Their Attorney

Dated: November 16, 1977

FILED
Dec 21 4 43 PH '77
U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RONNI ALEXANDER, ET AL, Plaintiffs	
VS.	CIVIL NO. N-77-277
YALE UNIVERSITY, Defendant	

RULING ON MOTION TO DISMISS

The appropriateness of immediate federal judicial relief is at issue in the instant civil action seeking redress for purported sex discrimination at Yale University. Plaintiffs are a male faculty member and several women students or former students who fundamentally contend that the defendant university's purported

> "failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in education."

In requesting corrective measures "to be designed and implemented under the supervision of this Court", plaintiffs assert a right to relief individually and on behalf of a proposed class under Title IX of the Education Amendments of 1972, which provides in pertinent part in 20 U.S.C. § 1681(a) that

> "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ."

P-034-B

In express terms, Title IX calls for administrative enforcement of that prohibition against sex discrimination, with funding cut-off a potential sanction when "compliance cannot be secured by voluntary means", 20 U.S.C. § 1682, but plaintiffs have not attempted resort to the responsible enforcing agency, the Department of Health, Education and Welfare. The statute contains no explicit grant of private suit rights other than through ultimate judicial review of H.E.W.'s actions, see 20 U.S.C. § 1683, and in moving to dismiss defendant chiefly argues that no right to sue can be properly "implied".

It is of course settled that no express statutory reference to a right of action is required to enable federal courts "to provide such remedies as are necessary to make effective the congressional purpose", J. I. Case Co. v. Borak, 377 U.S. 426, 433 (1964), and judicial remedies accordingly have been thought appropriately "implied" when "congressional purposes are likely to be undermined absent private enforcement" by those "intended to be protected by the statute",

Piper v. Chris-Craft Industries, Inc., 430 U.S. 1, 25 (1977). The general inquiry prompted by defendant's pending motion then is "whether the creation by judicial interpretation of the implied cause of action asserted . . . is necessary to effectuate Congress' goals", id. at 26.

That "need" inquiry here involves distinct aspects. A logical prerequisite is that there be a sufficiently defined wrong under the statute invoked, and claims for relief adequately presented by the parties plaintiff. In this regard, it should be stressed at the outset that while the complaint deserves generous reading, see Scheuer v. Rhodes, 416 U.S.

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232, 236 (1974), the question is not so much the customary one on motion to dismiss -- whether plaintiffs could conceivably prove facts calling into play an established right of action -- as instead whether any circumstance depicted genuinely impels judicial creation of a new suit right, cf. Turpin v. Mailet, Civil No. N-75-181 (D. Conn. May 13, 1977). Such an approach is surely also consistent with Title IX's aims, for the statute is clearly addressed to specific practices of exclusion, inequitable resource allocation and similar concrete abuses. So viewed, most claims advanced in this action are tenuous indeed.

The complaint is founded on alleged instances of sexual harassment of women students by male faculty members or administrators, and the principal claim for relief is for an order "requiring defendant to institute and continue a mechanism for receiving, investigating and adjudicating complaints of sexual harassment", with plaintiffs asserting in conclusory fashion that their reported experiences are somehow

> "the result of a pattern, practice, and policy of defendant, its officers, agents, and employees, of neglecting and refusing to consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators."

Before considering the university's possible responsibility, however, it must be observed that in any event a number of the proposed plaintiffs simply advance no persuasive claim that they have been deprived of cognizable Title IX rights. Plaintiff John Winkler, a member of the classics department, believes his teaching effort to have been hampered by an

"atmosphere of distrust [of] male professors"; plaintiff Lisa Stone, a current student, speaks of "great emotional distress" on learning that another woman student was "the subject of sexual pressures and attentions from" a male university employee; plaintiff Ann Olivarius, a recent Yale graduate, relates that she had occasion as an officer of the Undergraduate Women's Caucus when at Yale to discuss with other students their complaints of sexual harassment, and allegedly met rebuff or indifference in attempting to press such complaints herself. None of these claims is of personal exclusion from a federally funded education program or activity, or of the personal denial of full participation in the benefits of such a program or activity in any measurable sense. No judicial enforcement of Title IX could properly extend to such imponderables as atmosphere or vicariously experienced wrong, and the claims just mentioned are untenable on their face.

Since any underlying claim that she was herself denied Title IX rights in unsuccessfully pursuing others' complaints does not merit recognition, there is no need to examine the propriety otherwise of the lone request for damages, plaintiff Olivarius' incidental prayer for $500 as compensation for asserted expenditure of "time, effort and money in investigating complaints herself, preparing them to be presented to responsible officials . . . and attempting to negotiate the complexities of ad hoc 'channels'". Moreover, her graduation seems to have rendered moot her claim for equitable relief, which would appear to be the case as well for plaintiff Ronni Alexander -- a graduate in 1977 before suit was commenced -- absent sheer conjecture that the latter may in the future wish

to resume study in a field allegedly abandoned at Yale because of "sexual demands" by her tutor, cf. DeFunis v. Odegaard, 416 U.S. 312, n. 5 at 320 (1974).

Currently at Yale are two other women students who -- like plaintiff Alexander -- complain of a direct, personal experience of sexual harassment. Plaintiff Margery Reifler speaks in general terms of humiliation, distraction from studies and denial of recognition resulting from alleged harassment by a coach when she was manager of an athletic team; she "wanted to complain to responsible authorities" but did not. Plaintiff Pamela Price asserts that she received a poor grade in a course in her major field of study, not due to any "fair evaluation of her academic work", but as the consequence of her rejecting a professor's outright proposition "to give her a grade of 'A' in the course in exchange for her compliance with his sexual demands". Price represents that she did complain promptly after that alleged incident only to be "told by responsible officials of defendant that nothing could be done to remedy her situation"; plaintiff further alleges that long after the ensuing course mark was given, she was asked to re-submit her complaint, but then "no investigation of the incident" was made and Yale officials have indicated that "nothing further will or can be done about her complaint". Plaintiff Price is a senior, in the process of applying to law schools, and expresses immediate concern that a clearly improper low grade "could materially damage . . . likelihood of admission".

A critical difference between these two claims is that plaintiff Reifler concededly made no complaint on which Yale could act, while plaintiff Price did complain to the university

and supposedly met rebuff. The former's artfully drafted but conclusory assertion that general university inertia should be equated with policy and has "the effect of actively condoning . . . sexual harassment" is simply not adequate to show that Yale acted to deny her any right, cf. Rizzo v. Goode, 423 U.S. 362, 376-377 (1976), Turpin, supra, and the concept of mere respondeat superior appears ill-adapted to the question of Title IX sex discrimination based on harassment incidents. This is not to say either that sexual harassment is never of concern under Title IX, or that a university may properly ignore the matter entirely. In plaintiff Price's case, for example, it is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment, see, e.g., Barnes v. Costle, 561 F.2d 983, 988-992 (D.C. Cir. 1977). When a complaint of such an incident is made, university inaction then does assume significance, for on refusing to investigate, the institution may sensibly be held responsible for condoning or ratifying the employee's invidiously discriminatory conduct, cf. id. at 1000-1001 (MacKinnon, J., concurring).

But may any such private suit be entertained? The only reported appellate decision is contrary to plaintiffs' position, the Court of Appeals for the Seventh Circuit having held in the context of sex discrimination alleged by a disappointed medical school applicant that

> "it would be an unwarranted exercise of federal judicial power to imply a private right of action in the face of a sophisticated scheme of adminis-

trative enforcement and judicial review that, if given an opportunity to work, may well prove itself adequate to the task for which Congress designed it."

Cannon v. University of Chicago, 559 F.2d 1063, 1082 (7 Cir. 1977) (on rehearing). On careful study of the factors pertinent to any such conclusion, however, this Court is unable to agree that the private claim may be summarily dismissed without further inquiry into actual need.

As pointed out initially, the overall question is whether the federal court should recognize or fashion a new suit right because "necessary to effectuate Congress' goals", Piper v. Chris-Craft Industries, Inc., supra at 26. The commonly accepted approach to the question of implying a judicial remedy, seemingly still valid, id. at 37, has been to examine four specific factors identified as relevant in Cort v. Ash, 422 U.S. 66, 78 (1975):

> "First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' Texas & Pacific R. Co. v. Rigsby, 241 U.S. 33, 39 (1916) (emphasis supplied) -- that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? See, e.g., National Railroad Passenger Corp. v. National Assn. of Railroad Passengers, 414 U.S. 453, 458, 460 (1974) (Amtrak). Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, e.g., Amtrak, supra; Securities Investor Protection Corp. v. Barbour, 421 U.S. 412, 423 (1975); Calhoon v. Harvey, 379 U.S. 134 (1964). And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law? See Wheeldin v. Wheeler, 373 U.S. 647, 652 (1963); cf. J. I. Case Co. v. Borak, 377 U.S. 426, 434 (1964); Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 394-395 (1971); id., at 400 (Harlan, J., concurring in judgment)."

It is clear that plaintiff Price is within the class Title IX was designed to protect and that the claim is in no realistic sense more appropriate for state court action. Title IX's legislative history does not unequivocally show an express congressional intent to permit or preclude a private right of action, and although the history of subsequent passage of the Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988, as amended, may perhaps be read to indicate that the latter statute's mention of Title IX was but prudent inclusion in the event courts did thereafter imply a private remedy, plaintiff's resort to this Court is certainly not ruled out, see Cort v. Ash, supra at 82. Indeed, H.E.W. has further urged here and in Cannon that private suit enforcement would promote Title IX's purpose. The Cannon panel concluded that leave to sue "would be inconsistent with the legislative intent and underlying purposes of the statutory scheme", Cannon, supra at 1080, that court discerning "implicit" intent in the stress on the administrative process and expressing concern lest "private parties . . . circumvent the remedial scheme created by Congress", id. at 1081, with the "remedies available" not shown "wholly inadequate", id. at 1082.

One difficulty with following Cannon is that the decision may yield substantially different enforcement rights to victims of sex discrimination than to those subjected to discrimination in federally assisted programs "on the ground of race, color, or national origin" in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq., although Title IX was obviously patterned after Title VI, including its enforcement provisions, see §§ 2000d-1, 2000d-2. It seems plain enough that Title VI violations are actionable, see,

e.g., Lau v. Nichols, 414 U.S. 563, 566 (1974), and it is hard to understand why all Title IX claims should be less favorably regarded, see, e.g., McCarthy v. Burkholder, Civil No. 75-136-C6 (D. Kan. April 19, 1977). It naturally has been suggested that such Title VI cases have been against "public" defendants and therefore strictly rest on the Civil Rights Act's grant of the right to sue for a deprivation under color of state law "of any rights . . . secured by the Constitution and laws", 42 U.S.C. § 1983, see Cannon, supra at 1083. If so, it could hardly be a principled distinction that one student would be at Yale and another at the University of Connecticut; if the state college student can secure judicial relief under § 1983, the more reason to imply a suit right for the identically situated private university student, cf. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

More importantly, perhaps, the issue of need for the remedy merits additional probing. While the Supreme Court has remarked that "express statutory provision for one form of proceeding ordinarily implies that no other means of enforcement was intended by the Legislature", Securities Investor Protection Corp. v. Barbour, 421 U.S. 412, 419 (1975) ("SIPC"), see also National Railroad Passenger Corp. v. National Ass'n of Railroad Passengers, 414 U.S. 453, 458 (1974) ("Amtrak"), the observation has been made in the context of either clearer legislative intent than is provided by Title IX's ambiguous history -- a statute based on Title VI and curiously followed by subsequent legislative mention of attorney's fees -- compare Amtrak, supra at 459-461, or of manifestly disruptive consequences of private suit, see id.

at 461-465, SIPC, supra at 421-423, which are not evident for all possible Title IX claims. It is obviously significant that the enforcing agency urges recognition of private suit rights, see, e.g., Allen v. State Board of Elections, 393 U.S. 544, n. 23 at 557 (1969), particularly since H.E.W.'s position that private enforcement is at least a helpful supplement is a reasonable one, cf. SIPC, supra at 424-425. In view of that stance, it may be improvident either hastily to infer an unexpressed legislative "intent" to bar any such suit, or merely to assume inconsistency between remedies.

As amici curiae, the Women's Equity Action League Educational and Legal Defense Fund and the National Organization for Women Legal Defense Fund contend in further support of plaintiffs that it is already patent under Title IX that "the remedies available have proven to be wholly inadequate to the task of protecting those rights", Cannon, supra at 1082. To the extent factual and concerned with delayed and circumscribed administrative enforcement, the argument cannot be accepted outright without opportunity for reply by defendant. In the light of H.E.W.'s long delay even in promulgating enforcing regulations, however, the contentions advanced are surely not insubstantial, and it seems unsound to dismiss this complaint in its entirety at the outset on sheer assumption that administrative enforcement may prove adequate while refusing to allow a threshold showing purporting to demonstrate the contrary.

For similar reasons, plaintiff Price's complaint may not be dismissed on its face despite failure to seek any administrative recourse whatsoever, since ordinarily beneficial and fair requirements of administrative exhaustion should not be

imposed absent realistic possibility of a meaningful remedy. Although H.E.W. could hardly evince indifference to what amounts to a claim that Yale has not complied with the basic implementing regulation calling for Title IX "grievance procedures", 45 C.F.R. § 86.8(b), and while under the Title VI regulations also made applicable in Title IX matters, 45 C.F.R. § 86.71, an individual may make a written complaint which would at least obligate H.E.W. to make initial "prompt investigation" if the information provided "indicates a possible failure to comply" with Title IX duties, 45 C.F.R. § 80.7(b)-(c), there is good reason to believe that to leave Price to her administrative remedy would be an empty exercise. Putting to one side unconceded representations that the enforcement system is grossly deficient in actual operation, it is not realistic to expect even that "prompt" first-step administrative action -- much less any multi-stage proceedings -- could yield an effective remedy to one claiming imminent injury, with only a short interval between Yale's supposed abandonment of her complaint and the law school application process. Beyond the prayer for a court-ordered complaint mechanism, plaintiff Price has specifically requested investigation and a transcript notation in the interim that the disputed grade is under review, which clearly are potentially effective measures. Whether any such relief is proper is of course not the issue on the motion to dismiss, cf. Build of Buffalo, Inc. v. Sedita, 441 F.2d 284, 288 (2 Cir. 1971), but can be immediately tested on plaintiff's now-pending motion for preliminary injunction.

As far as this plaintiff is concerned, defendant's attendant jurisdictional objection lacks compelling force. If

the federal statutory claim may not rest on the jurisdictional grant extending to suits for relief "under any Act of Congress providing for the protection of civil rights", 28 U.S.C. § 1343(4), but cf. Jones v. Aldred H. Mayer Co., 392 U.S. 409 n. 1 at 412 (1968), the Court cannot hold with requisite certainty in this instance that the amount in controversy is inadequate to support proceedings under the general federal question grant of 28 U.S.C. § 1331. Defendant has also suggested that Title IX may be unconstitutional if construed to allow private suit, but advances no convincing authority for that contention in the situation presented.

For the reasons stated above, the instant motion to dismiss is accordingly hereby granted as to plaintiffs Alexander, Olivarius, Reifler, Stone and Winkler, and denied as to plaintiff Price.

Dated at New Haven, Connecticut, this 21st day of December 1977.

Arthur H. Latimer
Arthur H. Latimer
United States Magistrate

FILED JUN 30

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RONNI ALEXANDER, ET AL,
Plaintiffs

VS. CIVIL NO. N-77-277

YALE UNIVERSITY,
Defendant

RULING ON MOTION TO DISMISS

Six months ago this Court denied defendant's motion to dismiss the complaint of a Yale senior, Pamela Price, who asserted an "implied" right of federal suit under Title IX's prohibition against sex discrimination in federally funded educational activities, cf. 20 U.S.C. § 1681(a), claiming that the university refused to act on her complaint that a low mark in her major field of study resulted from her rejection of the course instructor's sexual advances. Familiarity with that earlier opinion is assumed, and on reflection and study of the record on defendant's second motion to dismiss the undersigned perceives no sufficient reason to depart from the prior decision's analysis and conclusions.

In so indicating, it should perhaps be noted in passing that defendant has accurately sensed that this Court was in part concerned in the earlier motion proceedings at the illogic and unfairness involved if a state university student

could press her Title IX claim through suit under the traditional Civil Rights Act addressed to "state" denial of federal rights, 42 U.S.C. § 1983, but the identically situated private college student was denied recourse to the courts, cf. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Defendant's current observation that the private/public distinction is no anomaly but instead commonly accepted is beside the point in this instance; the analogy offered is the fundamental distinction made by the Fourteenth Amendment's constraints on state action, but Constitutional rights to due process and equal protection themselves exist only as a shield against the unfettered exercise of official power, while Title IX gives both the public and private institution student the same statutory right of freedom from discrimination and the question is solely how that right will be enforced. Although defendant also suggested that the grant of a private suit remedy may be an unconstitutional application of Title IX, the discrimination bar is surely a permissible condition to acceptance of federal funding, and enforcement by private suit in appropriate circumstances is a matter not of constitutional moment but of whether the judicial remedy has been properly implied.

Plaintiff holds the more general view that her specific experience is a function of Yale's asserted noncompliance with the basic implementing regulation calling for Title IX "grievance procedures", 45 C.F.R. § 86.8(b), surely a question of some importance for the enforcing agency. There was good reason at the outset of her suit to believe that relegating her to the expressly provided administrative remedy, cf. 20

U.S.C. § 1682, would be an empty exercise. Even prompt administrative action could not have been realistically expected to yield the effective immediate relief which was potentially critical, since plaintiff was then in the midst of the law school application process and apprehensive at possible imminent injury in that competitive situation because of her mark. That conclusion made it unnecessary to weigh factual contentions made by amici curiae that delayed and circumscribed agency enforcement of the law had proved the administrative remedy inadequate generally. An affidavit submitted by defendant's attorney now represents that HEW regional staff counsel has related that the office is "generally able to process complaints within established timetables, which range from 105 days to 215 days, and . . . may be extended if required for conciliation or data collection". If inconsistent with information from amici concerning agency practices, counsel's affidavit only confirms that the administrative remedy would have been futile in plaintiff's circumstances in December.

Following denial of the initial motion to dismiss, plaintiff's ensuing application for a temporary injunction went off without formal hearing when the parties agreed to the university's dispatching letters to law schools to which she had applied advising that the validity of the political science grade in question was being contested in a lawsuit. Plaintiff has now been admitted to the University of California at Berkeley, but wishes to pursue that university's special four-year program leading to both a law school degree and a master's degree in a field of graduate study -- political science in this instance -- because "interested in the possi-

bility of pursuing an academic career", and informs the Court that the necessary further application and supporting materials must be submitted by December of this year.

In short, plaintiff's situation is still such that the purported wrong complained of could directly cause her significant concrete injury as an impediment to career plans, but the circumstances now allow and perhaps demand definitive inquiry into the administrative remedy's adequacy -- of central concern in implying remedy by suit -- including judicial determination of the merit or lack of merit in plaintiff's contention that general experience has in fact already shown administrative enforcement of Title IX to be ineffective. Whether the administrative remedy bars suit or at least requires exhaustion may and should now be promptly decided, and decided in the context of a determination of the question of adequacy in fact, left open previously for development of a pertinent record by the parties.

The motion to dismiss is accordingly hereby denied on the record presented; provided, that counsel are to confer forthwith concerning preparation for and scheduling of hearing before the trial Judge of the potentially dispositive threshold issue mentioned above. In the interim, any discovery and development of evidence should be focused on that question, to facilitate prompt final decision of the issue, cf. Rule 42(b), Fed. R. Civ. P.

Dated at New Haven, Connecticut, this 30th day of June 1978.

Arthur H. Latimer
Arthur H. Latimer
United States Magistrate

Jul 2 2 57 PM '77
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PAMELA PRICE :

v. : CIVIL NO. N-77-277

YALE UNIVERSITY :

MEMORANDUM OF DECISION

This action was originally brought on July 6, 1977, by a male faculty member and several women students and former students at Yale University seeking redress for purported sex discrimination at the university and contending that Yale's alleged "failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in

education." Complaint, paragraph 1.

The plaintiffs asserted a right to relief individually and on behalf of a proposed class under Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq.,[1] and requested, inter alia, various corrective measures to be designed and implemented under the supervision of this court. Jurisdiction of the court was invoked pursuant to 20 U.S.C. §1681 and 28 U.S.C. §§ 1343, 2201 and 1331.

A motion to amend the complaint in which the plaintiff, Pamela Price, was added as a party was filed on November 16, 1977, and granted on December 7, 1977. A ruling of Magistrate Arthur H. Latimer of December 21, 1977, endorsed by Judge Jon O. Newman on November 28, 1978, 459 F. Supp. 1, granted the defendants' motion to dismiss as to all plaintiffs except Miss Price holding that a right of action on behalf of Miss Price might be implied

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if administrative remedies provided by the Department of Health, Education and Welfare proved to be inadequate and, in a subsequent ruling filed December 6, 1978, this court found such to be the case.[2/]

In her complaint plaintiff Price alleged that, in June, 1976, when she went to the office of Raymond Duvall, the professor who taught her course in International Relations, Political Science 39b, at the defendant university, Professor Duvall "offered to give her a grade of 'A' in the course in exchange for her compliance with his sexual demands." She further alleged that, shortly after the incident, she complained orally and in writing to responsible university officials, and was told nothing could be done about her situation, that no investigation was made or disciplinary action taken against Professor Duvall and that she later received a grade of "C" in the course which "was not the result of a fair evaluation of her academic work, but the result of her refusal to accede to Professor Duvall's sexual demand." Miss Price alleged further that, "[a]s the direct result of her explicit rejection of said sexual proposition, [she] suffered educational detriment. She has suffered distress, humiliation, has received a grade on her transcript that does not reflect the quality of her academic performance, and has been injured, and is continuously being injured, in her educational advancement and in the future pursuit of her career." Plaintiff also alleged that in September, 1977, officers of the defendant requested she resubmit her complaint but that, after her resubmission, no investigation of the incident was made nor was her grade changed and that her experience is the result of a pattern,

practice and policy of defendant of neglecting and refusing to process and consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators.

The court, during the seven trial days of this case, had the benefit of the testimony, among others, of Miss Price and Professor Duvall, as well as that of officials of Yale University and those academicians who reviewed Miss Price's paper at the request of the University and of the plaintiff. On the basis of all the evidence the court finds that the alleged incident of sexual proposition did not occur and that the grade of "C" which Miss Price received on the paper submitted to Professor Duvall and the grade of "C" which she received in his course did not reflect consideration of any factor other than academic achievement.[3/] The court does not find -

nor could it - the appropriate grade for Miss Price's paper, clearly an academic and subjective judgment beyond its competence. The court finds only that Miss Price did not prove that the refusal of a sexual advance was a consideration in the determination of that grade by Professor Duvall.

FACTS

Plaintiff Pamela Price, currently a law student at the University of California at Berkeley, was graduated from Yale University in May, 1978, as a political science major, having commenced her studies at that university in September, 1974. In the spring term in 1976 she was enrolled in a course denominated Political Science 39B taught by Professor Raymond Duvall. This course was concerned with the international relations of under-developed countries and focused on the general topics of international constraints on the development of

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those countries. The course met twice weekly in a lecture session and was broken down into two discussion sections which met weekly, each under the direction of a teaching assistant. In Miss Price's section the teaching assistant was James Austin. The final grade in Political Science 39B was derived from two elements, a final examination which constituted forty per cent of the grade and an original research paper which would count for sixty per cent of the grade. Miss Price received a "C-" on her final examination in the course and made no claim in this law suit with respect to the propriety of that grade.

During the spring term Miss Price who, in addition to her studies at the university, worked for the Afro-American Cultural Center at Yale and taught a psychology course at Lee High School in New Haven, found it necessary to request extensions for the submission of papers due in Political Science 39B and in History 73B and Political Science 27B. On April 29, 1976, she was granted an extension in Political Science 39B until May 31, the paper originally being due on April 30, the date of her final examination in the course.

On April 30, James Austin was one of two teaching assistants serving as proctors for the examination in Political Science 39 . Toward the end of the examination period Miss Price, in an agitated state, told him she had lost a spiral notebook which she had in the examination room with her and which, she claimed, contained her paper on which she had only a few more hours of work to do, her rough draft and her notes. At some unspecified later date her notebook was returned to her.

Subsequently, on the evening of June 6, 1976, Miss Price, in the company of a fellow student, visited

the apartment of Eva Balogh, Dean of Yale's Morse College, of which college Miss Price was a member. At that time Brenda Jubin, former Dean of the college, was visiting Dean Balogh. In the presence of her companion and Miss Jubin, Miss Price related that, on that day, she had gone to Professor Duvall's office to turn in her research paper and that Duvall sexually propositioned her and said that, if she did not oblige, she might end up with a grade of "C" in the course. Miss Price claimed she had refused to comply and asked what could be done about the situation. Dean Balogh advised Miss Price, because of the complexity of such a situation which occurs in private, to wait until she received her course grade since, if it were a "C", it would give her more credence.

Miss Price agreed that this was the best course of action. She asked Dean Balogh to keep the matter confidential and expressed her opinion that the paper was at least of "B" caliber and that she expected an "A" in the course. As plaintiff planned to leave shortly for her junior year studies in Tanzania, Dean Balogh asked her to write and agreed to "keep an eye on the grade." Within twenty-four hours Miss Price left New Haven.

The next morning Dean Balogh reported the episode to Martin Griffin, Associate Dean of Yale College and Dean of Undergraduate Studies. She told the Dean that she had suggested Miss Price wait until her grade came in and Dean Griffin agreed it was appropriate to wait for the grade and for further word from Miss Price.

Within the week Dean Balogh learned that Miss Price had received a grade of "C" in Political Science 39B. She telephoned Dean Griffin and reported to him the grade

and her belief that Miss Price was in Tanzania. He replied he did not think anything could be done until they heard from Miss Price.

On June 23, 1976, Miss Price returned to New Haven and recounted to Eric Lum, director of the Afro-American Cultural Center, the same allegations as to Professor Duvall's conduct. Mr. Lum advised her to type up a statement about the incident which she did, leaving it with him. She did not contact Dean Balogh or make any effort to determine her course grade from anyone at Yale, and she left New Haven for New York, her departure point for Tanzania.

Professor Duvall left New Haven at the end of June to accept a position at the University of Minnesota where he is presently a tenued member of the faculty.

In late July or early August Miss Price learned of her grade in a letter from her mother. She did not,

however, write to anyone at Yale University about it although she wrote to Dean Balogh, Eric Lum and Harnesba Hill, Dean of Student Affairs at Yale, during her absence, without commenting in any of that correspondence on her grade or any action she wished taken with respect thereto.

Miss Price returned to New Haven in May, 1977, and although she saw and spoke with Dean Balogh several times during the spring and summer, she did not mention the incident.

Prompted by the filing of the instant law suit, in August, 1977, Dean Griffin asked Dean Balogh, as he asked all the residential college deans, to let him know anything the university should have knowledge of in the context of the law suit. Dean Balogh reminded him of Miss Price's charge and he requested Dean Balogh to submit a written statement. Dean Balogh submitted such a statement on August 30 and, after receiving it and

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consulting with Horace Taft, Dean of Yale College, Dean Griffin requested Dean Balogh to ask Miss Price if she wished to make a formal complaint. Miss Price submitted a complaint on September 23, 1977, which Dean Balogh transmitted to Dean Griffin with a covering letter on September 27.

Dean Griffin and Dean Taft discussed the best method of addressing Miss Price's complaint and, because Professor Duvall was no longer at Yale, determined to proceed as if Miss Price's allegations of impropriety had been substantiated and determine whether her course grade was proper. They then submitted Miss Price's research paper, her written complaint and a letter from Eric Lum which enclosed Miss Price's statement of June 23, 1976, to Joseph LaPalombara, chairman of the political science department, with the request that the paper be read by one or two persons in the department.

Professor LaPalombara read the paper and determined that it was a mediocre paper, essentially worth a "C" grade. He then gave the paper to Professor William Foltz, an African specialist in the political science department, for his evaluation, Miss Price's paper having been written about Tanzania. Professor Foltz was not told the name of the student, or why an evaluation was sought. Professor Foltz, having read the paper, determined it should be graded "C" or "B", "C" if it was supposed to be original research, "B" if it was supposed to be a think piece where the student was not expected to have detailed knowledge about a particular country.

When Professor LaPalombara reported to Dean Griffin that the paper deserved either a "B" or a "C", depending

on what was expected of the student, Dean Taft advised him that this was not a response to the request since a clear recommendation of a grade was required. He also asked Dean Griffin to contact Dean Balogh and ask her to determine from Miss Price more specifics on the kind of paper this was. Dean Balogh reported back that the paper was supposed to be a research paper and that James Austin was the teaching assistant in the course. This information in turn was given to Professor LaPalombara who secured a copy of the syllabus course and asked Mr. Austin also to read the paper. Although Mr. Austin knew the identity of the student, he believed the paper had recently been submitted by the plaintiff in order to obtain course credit and was unaware of the circumstances prompting the departmental review or that any other person was reading the paper. Mr. Austin assigned a grade of "C" to the paper.[4/]

Thereafter on November 15, 1977, Deans Griffin, Taft and Balogh met with Miss Price in Dean Taft's office to inform her of the result of the university investigation. Dean Taft stated that if Professor Duvall were still at the university, it would have conducted an inquiry under procedures established by the American Association of University Professors for investigation of serious complaints against faculty members, but that, in his absence, they proceeded as if that investigation had taken place and her charge had been substantiated. Dean Taft then indicated the evaluation of Miss Price's paper by three readers indicated it should be graded no greater than "C" and, since it accounted for sixty per cent of her course grade, there was no basis for changing her final grade.

CONCLUSIONS OF LAW

The court is unaware of any case in which an allegation of sexual harassment in an educational context has been addressed. It has consistently been plaintiff's contention that the failure of Yale University to have adopted regulations to set forth procedures to be followed in cases of alleged sex discrimination is in itself a violation of law, specifically that portion of the regulations of the Department of Health, Education and Welfare, 45 C.F.R. §86.8(b), which requires that "[a] recipient [of federal financial assistance 5/] shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part."

In June, 1976, when Miss Price first spoke to

Dean Balogh, Yale University had no such regulations setting forth any procedures to provide for resolution of such complaints. In the spring and summer of 1977, Regulation XI of the Undergraduate Regulations provided that "[i]f a student in Yale College believes that someone acting for the University has behaved towards the student in a way that is improperly based upon considerations of . . . sex . . . , the student should normally first discuss the problem with the person complained of, but may also seek advice on how to secure an equitable solution of the problem from the Masters and Deans of the Residential Colleges, the Chairman of the Yale College Executive Committee, or the Associate Dean for Student Affairs. If the problem cannot be resolved by informal discussion, the person or persons to whom it is referred shall assure that the complaint is reviewed by the appropriate authorities and/or established procedures. An instructor's evaluation of

the quality of a student's work in a course is final, and this statement shall not be construed as applying to a dispute about a grade assigned to a student by a member of the faculty."

This court is in agreement that the procedures set forth above give no real guidance to students or to faculty as to procedure to be followed with respect to claims such as Miss Price had made. The suggestion that one first approach the offending faculty member seems particularly inappropriate in such a case. It also appears that Yale's actual response in this case was entirely ad hoc but, given the unique factual situation in this case where the plaintiff left the university shortly after first indicating her complaint and did not return until some eleven months later, having expressed no interest or concern to university officials in the

interim, Yale's handling of her complaint was neither arbitrary nor unreasonable. The question arises, however, whether, given the factual findings made by this court in this case, the inadequacy of procedures to respond to claims of sexual discrimination should be addressed by the court.

An analogy may be drawn to cases alleging sexual discrimination in employment. In those cases a plaintiff must establish that the acts complained of constitute a condition of employment and that this condition was imposed by the employer on the basis of sex. Tomkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3d Cir. 1977). If plaintiff had proved that a demand for sexual compliance was made of her because of her sex and that her course grade was conditioned on that compliance, the analogy would be apt.. But it does not follow that, if Yale University failed to articulate appropriate procedures to deal with such a claim, a

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plaintiff who can show neither an improper advance nor the injury she claimed has a grievance to be redressed by this court. She must show not only the wrongful conduct claimed but that she is suffering adverse effects as a consequence of that conduct. O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974). Miss Price, no longer a student at Yale University, is herself unaffected by the existence or nonexistence of such university regulations, even if that existence or nonexistence has an adverse impact on present female students. In her complaint she claimed that she "is continuously being injured, in her educational advancement and in further pursuit of her career." Such a claim can only relate to her allegation of an improper grade on her transcript, an allegation she has failed to prove.

Accordingly, judgment may enter for the defendant.

SO ORDERED

Ellen B. Burns

ELLEN BREE BURNS
UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut, this 2nd day of July, 1979.

F O O T N O T E S

1/ 20 U.S.C. §1681 provides in pertinent part: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . ."

2/ In Cannon v. University of Chicago, ___ U.S. ____, 47 U.S.L.W. 4549, decided May 14, 1979, the Supreme Court found Title IX of the Education Amendments of 1972 implicitly creates a private right of action for sex discrimination in education.

3/ This court does not accept the proposition pressed by defendant that the correctness of the grade received in a case where sexual harassment is proved would itself be dispositive of a claim of discrimination. If a plaintiff shows a term or condition has been imposed in a sexually discriminatory fashion she will have stated a claim. Cf. Tomkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3d Cir. 1977), sex discrimination in employment. Proof that the grade is correct in such a case would not mean the student had not suffered educational detriment. Her performance might be adversely affected by emotional trauma or she might forego other courses taught by the offending instructor despite their importance to her educational plans.

4/ Miss Price's expert witness, who was a former student of, and teaching assistant to, Professor Duvall for whom he had graded examination papers, testified he would assign a grade of "B" to plaintiff's paper but that, if he applied the standards and requirements which Professor Duvall would apply, he would probably assign it a grade of "C".

5/ Defendant points out in its brief that plaintiff failed to offer evidence of Yale's receipt of federal financial assistance. Since, in the protracted and vigorously contested pretrial motions and hearings in this case, defendant never raised the issue that it is not subject to Title IX, it could well be found to have waived requirement of such proof.

Alexander v. Yale fact Sheet

Book Copy
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Alexander v. Yale is a landmark lawsuit charging that Yale University condones the sexual harassment of women students in violation of Title IX. The named plaintiff was offered an "A" in a course in her area of specialization if she would comply with her professor's sexual demands. She flatly refused and complained orally and in writing to responsible Yale officials even before the grade of "C" was given. Because she is a black woman, her complaints were not only viewed as inconsequential, but were ignored even more blatantly than complaints of white women. Not until one and a half years later, after Alexander v. Yale was filed, did Yale act. Officials then claimed to review the grade, but ignored the sexual incident entirely. The grade was not changed.

Alexander v. Yale is a class action suit against Yale as an institution because the issue is larger than the individuals involved. There are many other women who have found that their sexuality was a decisive factor in whether or not they could learn from a faculty member.

The lawsuit asks for a grievance procedure as a remedy and preventive measure, not for damages from individual offenders. With a procedure, the responsibility for abuse of faculty power will remain within the university, but students will be guaranteed an effective channel for complaint for the first time.

Sexual Harassment

"The issue is that some, acting upon archaic and feudal assumptions, will attempt to compromise my respect for myself as a human being (i.e. as more than a sex object).
Statement, Pamela Price, December 21, 1977

"You begin to wonder about the intentions of a Director of Graduate Studies who spends more time patting your thighs and pinching your rear than discussing your academic career."
A graduate student quoted in Alice Dembner, "A Case of Sex Discrimination," Yale Graduate Professional, March 6, 1978

"It is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment."

United States Magistrate Arthur Latimer, Ruling on Yale's Motion to Dismiss, December 21, 1977

"A woman who attempted to complain through university channels now faces the possibility that the man she complained about will be rehired without an investigation into her allegations. 'I tried the Yale channels for a year, I played their game, and now I'm angry. Nothing has been done and I am not the only one who has complained about this man."

Dembner, Yale Graduate Professional

"Yale's failure to deal in any systematic and effective manner with the issues raised by this suit and numerous complaints from women at Yale, and the invocation of the 'sanctity' of the grading procedure and of this grade in particular, reflects a completely inadequate and repressive perspective on the position of women within the university. It follows that this perspective serves to condone, uphold and defend a practice of racist sexual discrimination and consequently subordination of women not only within the university, but within the society as a whole."

Statement, Pamel Price, December 21, 1977

Support

On December 21, 1977, United States Magistrate Arthur Latimer decided that one of the plaintiffs has the legal right to continue the suit against Yale university for sexual harassment in federal court; we now face a possibly long and costly court battle to determine whether Yale in fact is legally responsible to her and the class of women she represents. Your support would be greatly appreciated. Checks can be made out to the CAPP STREET FOUNDATION for a tax deductible donation. Send donations to the Yale Undergraduate Women's Caucus, Box 4761 Yale Station, New Haven, Connecticut 06520. The Caucus will also provide more information on request.

JUL 2 0 1978

Yale Undergraduate Women's Caucus and Grievance Committee

The Yale Undergraduate Women's Caucus began as an organization of six women in September 1974. Since that time our membership has grown to include nearly two hundred members of the Yale community. As the Caucus has grown in size we have retained a primarily horizontal organization where members work co-operatively toward common goals. We are committed to educational, cultural, and political actions around issues of importance to women at Yale.

As an educational organization the Caucus is primarily concerned with bringing women's issues and problems to the attention of the Yale community. Our activities include: panel discussions("Does Feminism Address the Needs of Women?," Fall, 1977; "Women and Politics," Spring, 1978); consciousness-raising groups; self-help groups and Women's Studies discussion tables.

As a cultural organization, we provide opportunities for women to be together in an enjoyable, relaxed atmosphere. These events include art shows, poetry readings, films, and open houses. The Caucus shares a "Women's Space" with five women's organizations on campus which is a center for our cultural and educational activities.

As a political organization the Caucus works within Yale on issues of concern to women. A summary of our political efforts includes: admissions; Affirmative Action; gynecology; security; women's athletics; and women's studies. Our political purpose is clear: to promote the position of women at Yale, thus eliminating institutional and attitudinal sexism.

The Grievance Committee was formed in March, 1977 to make the Yale community aware of the problem of sexual harassment of women students by male faculty members. No university committee or grievance procedure exisits to address this problem. Our primary goal is to have the university establish an official grievance procedure specifically for sexual harassment. Toward this end we are lobbying within the university for a grievance procedure and supporting the present class action suit in Federal District Court in New Haven.

Our work currently centers around increasing financial, political, and moral support for the lawsuit. Campus organizing has focused on three areas; 1. disseminating information about the suit by sponsoring discussion sessions in the residential colleges and distributing fact sheets, 2. generating broad support for the establishment of a grievance procedure by conducting a college-wide petition drive, organizing a faculty support committee and soliciting support from campus organizations, and 3. encouraging the formation of and participating on the Yale College Dean's Advisory Committee on Grievance Procedures. Members of the Grievance Committee have written articles and editorials for university and community newspapers on the specifics of the suit as well as the larger issue of sexual harassment in education. In addition to our work on the Yale campus we have appeared on radio and television talk shows and have spoken to groups in the community and at other colleges. Our fund-raising efforts include selling tee-shirts, inviting individuals to give benefit performances or speeches, and asking foundations as well as individuals for contributions. During the past year Dick Gregory, Robin Morgan and Marge Piercy are among those who have given benefit speeches or poetry readings for Alexander v. Yale.

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FILED
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U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RONNI ALEXANDER, ET AL, Plaintiffs	
VS.	CIVIL NO. N-77-277
YALE UNIVERSITY, Defendant	

RULING ON MOTION TO DISMISS

The appropriateness of immediate federal judicial relief is at issue in the instant civil action seeking redress for purported sex discrimination at Yale University. Plaintiffs are a male faculty member and several women students or former students who fundamentally contend that the defendant

university's purported

> "failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in education."

In requesting corrective measures "to be designed and implemented under the supervision of this Court", plaintiffs assert a right to relief individually and on behalf of a proposed class under Title IX of the Education Amendments of 1972, which provides in pertinent part in 20 U.S.C. § 1681(a) that

> "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ."

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In express terms, Title IX calls for administrative enforcement of that prohibition against sex discrimination, with funding cut-off a potential sanction when "compliance cannot be secured by voluntary means", 20 U.S.C. § 1682, but plaintiffs have not attempted resort to the responsible enforcing agency, the Department of Health, Education and Welfare. The statute contains no explicit grant of private suit rights other than through ultimate judicial review of H.E.W.'s actions, see 20 U.S.C. § 1683, and in moving to dismiss defendant chiefly argues that no right to sue can be properly "implied".

It is of course settled that no express statutory reference to a right of action is required to enable federal courts "to provide such remedies as are necessary to make effective the congressional purpose", J. I. Case Co. v. Borak, 377 U.S. 426, 433 (1964), and judicial remedies accordingly have been thought appropriately "implied" when "congressional purposes are likely to be undermined absent private enforcement" by those "intended to be protected by the statute", Piper v. Chris-Craft Industries, Inc., 430 U.S. 1, 25 (1977). The general inquiry prompted by defendant's pending motion then is "whether the creation by judicial interpretation of the implied cause of action asserted . . . is necessary to effectuate Congress' goals", id. at 26.

That "need" inquiry here involves distinct aspects. A logical prerequisite is that there be a sufficiently defined wrong under the statute invoked, and claims for relief adequately presented by the parties plaintiff. In this regard, it should be stressed at the outset that while the complaint deserves generous reading, see Scheuer v. Rhodes, 416 U.S.

232, 236 (1974), the question is not so much the customary one on motion to dismiss -- whether plaintiffs could conceivably prove facts calling into play an established right of action -- as instead whether any circumstance depicted genuinely impels judicial creation of a new suit right, cf. Turpin v. Mailet, Civil No. N-75-181 (D. Conn. May 13, 1977). Such an approach is surely also consistent with Title IX's aims, for the statute is clearly addressed to specific practices of exclusion, inequitable resource allocation and similar concrete abuses. So viewed, most claims advanced in this action are tenuous indeed.

The complaint is founded on alleged instances of sexual harassment of women students by male faculty members or administrators, and the principal claim for relief is for an order "requiring defendant to institute and continue a mechanism for receiving, investigating and adjudicating complaints of sexual harassment", with plaintiffs asserting in conclusory fashion that their reported experiences are somehow

> "the result of a pattern, practice, and policy of defendant, its officers, agents, and employees, of neglecting and refusing to consider seriously complaints of sexual harassment of women students, with the effect of actively condoning continued sexual harassment of female students by male faculty members and administrators."

Before considering the university's possible responsibility, however, it must be observed that in any event a number of the proposed plaintiffs simply advance no persuasive claim that they have been deprived of cognizable Title IX rights. Plaintiff John Winkler, a member of the classics department, believes his teaching effort to have been hampered by an

"atmosphere of distrust [of] male professors"; plaintiff Lisa Stone, a current student, speaks of "great emotional distress" on learning that another woman student was "the subject of sexual pressures and attentions from" a male university employee; plaintiff Ann Olivarius, a recent Yale graduate, relates that she had occasion as an officer of the Undergraduate Women's Caucus when at Yale to discuss with other students their complaints of sexual harassment, and allegedly met rebuff or indifference in attempting to press such complaints herself. None of these claims is of personal exclusion from a federally funded education program or activity, or of the personal denial of full participation in the benefits of such a program or activity in any measurable sense. No judicial enforcement of Title IX could properly extend to such imponderables as atmosphere or vicariously experienced wrong, and the claims just mentioned are untenable on their face.

Since any underlying claim that she was herself denied Title IX rights in unsuccessfully pursuing others' complaints does not merit recognition, there is no need to examine the propriety otherwise of the lone request for damages, plaintiff Olivarius' incidental prayer for $500 as compensation for asserted expenditure of "time, effort and money in investigating complaints herself, preparing them to be presented to responsible officials . . . and attempting to negotiate the complexities of ad hoc 'channels'". Moreover, her graduation seems to have rendered moot her claim for equitable relief, which would appear to be the case as well for plaintiff Ronni Alexander -- a graduate in 1977 before suit was commenced -- absent sheer conjecture that the latter may in the future wish

to resume study in a field allegedly abandoned at Yale because of "sexual demands" by her tutor, cf. DeFunis v. Odegaard, 416 U.S. 312, n. 5 at 320 (1974).

Currently at Yale are two other women students who -- like plaintiff Alexander -- complain of a direct, personal experience of sexual harassment. Plaintiff Margery Reifler speaks in general terms of humiliation, distraction from studies and denial of recognition resulting from alleged harassment by a coach when she was manager of an athletic team; she "wanted to complain to responsible authorities" but did not. Plaintiff Pamela Price asserts that she received a poor grade in a course in her major field of study, not due to any "fair evaluation of her academic work", but as the consequence of her rejecting a professor's outright proposition "to give her a grade of 'A' in the course in exchange for her compliance with his sexual demands". Price represents that she did complain promptly after that alleged incident only to be "told by responsible officials of defendant that nothing could be done to remedy her situation"; plaintiff further alleges that long after the ensuing course mark was given, she was asked to re-submit her complaint, but then "no investigation of the incident" was made and Yale officials have indicated that "nothing further will or can be done about her complaint". Plaintiff Price is a senior, in the process of applying to law schools, and expresses immediate concern that a clearly improper low grade "could materially damage . . . likelihood of admission".

A critical difference between these two claims is that plaintiff Reifler concededly made no complaint on which Yale could act, while plaintiff Price did complain to the university

and supposedly met rebuff. The former's artfully drafted but conclusory assertion that general university inertia should be equated with policy and has "the effect of actively condoning . . . sexual harassment" is simply not adequate to show that Yale acted to deny her any right, cf. Rizzo v. Goode, 423 U.S. 362, 376-377 (1976), Turpin, supra, and the concept of mere respondeat superior appears ill-adapted to the question of Title IX sex discrimination based on harassment incidents. This is not to say either that sexual harassment is never of concern under Title IX, or that a university may properly ignore the matter entirely. In plaintiff Price's case, for example, it is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment, see, e.g., Barnes v. Costle, 561 F.2d 983, 988-992 (D.C. Cir. 1977). When a complaint of such an incident is made, university inaction then does assume significance, for on refusing to investigate, the institution may sensibly be held responsible for condoning or ratifying the employee's invidiously discriminatory conduct, cf. id. at 1000-1001 (MacKinnon, J., concurring).

But may any such private suit be entertained? The only reported appellate decision is contrary to plaintiffs' position, the Court of Appeals for the Seventh Circuit having held in the context of sex discrimination alleged by a disappointed medical school applicant that

> "it would be an unwarranted exercise of federal judicial power to imply a private right of action in the face of a sophisticated scheme of adminis-

trative enforcement and judicial review that, if given an opportunity to work, may well prove itself adequate to the task for which Congress designed it."

Cannon v. University of Chicago, 559 F.2d 1063, 1082 (7 Cir. 1977) (on rehearing). On careful study of the factors pertinent to any such conclusion, however, this Court is unable to agree that the private claim may be summarily dismissed without further inquiry into actual need.

As pointed out initially, the overall question is whether the federal court should recognize or fashion a new suit right because "necessary to effectuate Congress' goals", Piper v. Chris-Craft Industries, Inc., supra at 26. The commonly accepted approach to the question of implying a judicial remedy, seemingly still valid, id. at 37, has been to examine four specific factors identified as relevant in Cort v. Ash, 422 U.S. 66, 78 (1975):

"First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' Texas & Pacific R. Co. v. Rigsby, 241 U.S. 33, 39 (1916) (emphasis supplied) -- that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? See, e.g., National Railroad Passenger Corp. v. National Assn. of Railroad Passengers, 414 U.S. 453, 458, 460 (1974) (Amtrak). Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? See, e.g., Amtrak, supra; Securities Investor Protection Corp. v. Barbour, 421 U.S. 412, 423 (1975); Calhoon v. Harvey, 379 U.S. 134 (1964). And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law? See Wheeldin v. Wheeler, 373 U.S. 647, 652 (1963); cf. J. I. Case Co. v. Borak, 377 U.S. 426, 434 (1964); Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 394-395 (1971); id., at 400 (Harlan, J., concurring in judgment)."

It is clear that plaintiff Price is within the class Title IX was designed to protect and that the claim is in no realistic sense more appropriate for state court action. Title IX's legislative history does not unequivocally show an express congressional intent to permit or preclude a private right of action, and although the history of subsequent passage of the Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988, as amended, may perhaps be read to indicate that the latter statute's mention of Title IX was but prudent inclusion in the event courts did thereafter imply a private remedy, plaintiff's resort to this Court is certainly not ruled out, see Cort v. Ash, supra at 82. Indeed, H.E.W. has further urged here and in Cannon that private suit enforcement would promote Title IX's purpose. The Cannon panel concluded that leave to sue "would be inconsistent with the legislative intent and underlying purposes of the statutory scheme", Cannon, supra at 1080, that court discerning "implicit" intent in the stress on the administrative process and expressing concern lest "private parties . . . circumvent the remedial scheme created by Congress", id. at 1081, with the "remedies available" not shown "wholly inadequate", id. at 1082.

One difficulty with following Cannon is that the decision may yield substantially different enforcement rights to victims of sex discrimination than to those subjected to discrimination in federally assisted programs "on the ground of race, color, or national origin" in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq., although Title IX was obviously patterned after Title VI, including its enforcement provisions, see §§ 2000d-1, 2000d-2. It seems plain enough that Title VI violations are actionable, see,

e.g., Lau v. Nichols, 414 U.S. 563, 566 (1974), and it is hard to understand why all Title IX claims should be less favorably regarded, see, e.g., McCarthy v. Burkholder, Civil No. 75-136-C6 (D. Kan. April 19, 1977). It naturally has been suggested that such Title VI cases have been against "public" defendants and therefore strictly rest on the Civil Rights Act's grant of the right to sue for a deprivation under color of state law "of any rights . . . secured by the Constitution and laws", 42 U.S.C. § 1983, see Cannon, supra at 1083. If so, it could hardly be a principled distinction that one student would be at Yale and another at the University of Connecticut; if the state college student can secure judicial relief under § 1983, the more reason to imply a suit right for the identically situated private university student, cf. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

More importantly, perhaps, the issue of need for the remedy merits additional probing. While the Supreme Court has remarked that "express statutory provision for one form of proceeding ordinarily implies that no other means of enforcement was intended by the Legislature", Securities Investor Protection Corp. v. Barbour, 421 U.S. 412, 419 (1975) ("SIPC"), see also National Railroad Passenger Corp. v. National Ass'n of Railroad Passengers, 414 U.S. 453, 458 (1974) ("Amtrak"), the observation has been made in the context of either clearer legislative intent than is provided by Title IX's ambiguous history -- a statute based on Title VI and curiously followed by subsequent legislative mention of attorney's fees -- compare Amtrak, supra at 459-461, or of manifestly disruptive consequences of private suit, see id.

at 461-465, SIPC, supra at 421-423, which are not evident for all possible Title IX claims. It is obviously significant that the enforcing agency urges recognition of private suit rights, see, e.g., Allen v. State Board of Elections, 393 U.S. 544, n. 23 at 557 (1969), particularly since H.E.W.'s position that private enforcement is at least a helpful supplement is a reasonable one, cf. SIPC, supra at 424-425. In view of that stance, it may be improvident either hastily to infer an unexpressed legislative "intent" to bar any such suit, or merely to assume inconsistency between remedies.

As amici curiae, the Women's Equity Action League Educational and Legal Defense Fund and the National Organization for Women Legal Defense Fund contend in further support of plaintiffs that it is already patent under Title IX that "the remedies available have proven to be wholly inadequate to the task of protecting those rights", Cannon, supra at 1082. To the extent factual and concerned with delayed and circumscribed administrative enforcement, the argument cannot be accepted outright without opportunity for reply by defendant. In the light of H.E.W.'s long delay even in promulgating enforcing regulations, however, the contentions advanced are surely not insubstantial, and it seems unsound to dismiss this complaint in its entirety at the outset on sheer assumption that administrative enforcement may prove adequate while refusing to allow a threshold showing purporting to demonstrate the contrary.

For similar reasons, plaintiff Price's complaint may not be dismissed on its face despite failure to seek any administrative recourse whatsoever, since ordinarily beneficial and fair requirements of administrative exhaustion should not be

imposed absent realistic possibility of a meaningful remedy. Although H.E.W. could hardly evince indifference to what amounts to a claim that Yale has not complied with the basic implementing regulation calling for Title IX "grievance procedures", 45 C.F.R. § 86.8(b), and while under the Title VI regulations also made applicable in Title IX matters, 45 C.F.R. § 86.71, an individual may make a written complaint which would at least obligate H.E.W. to make initial "prompt investigation" if the information provided "indicates a possible failure to comply" with Title IX duties, 45 C.F.R. § 80.7(b)-(c), there is good reason to believe that to leave Price to her administrative remedy would be an empty exercise. Putting to one side unconceded representations that the enforcement system is grossly deficient in actual operation, it is not realistic to expect even that "prompt" first-step administrative action -- much less any multi-stage proceedings -- could yield an effective remedy to one claiming imminent injury, with only a short interval between Yale's supposed abandonment of her complaint and the law school application process. Beyond the prayer for a court-ordered complaint mechanism, plaintiff Price has specifically requested investigation and a transcript notation in the interim that the disputed grade is under review, which clearly are potentially effective measures. Whether any such relief is proper is of course not the issue on the motion to dismiss, cf. Build of Buffalo, Inc. v. Sedita, 441 F.2d 284, 288 (2 Cir. 1971), but can be immediately tested on plaintiff's now-pending motion for preliminary injunction.

As far as this plaintiff is concerned, defendant's attendant jurisdictional objection lacks compelling force. If

the federal statutory claim may not rest on the jurisdictional grant extending to suits for relief "under any Act of Congress providing for the protection of civil rights", 28 U.S.C. § 1343(4), but cf. Jones v. Alfred H. Mayer Co., 392 U.S. 409 n. 1 at 412 (1968), the Court cannot hold with requisite certainty in this instance that the amount in controversy is inadequate to support proceedings under the general federal question grant of 28 U.S.C. § 1331. Defendant has also suggested that Title IX may be unconstitutional if construed to allow private suit, but advances no convincing authority for that contention in the situation presented.

For the reasons stated above, the instant motion to dismiss is accordingly hereby granted as to plaintiffs Alexander, Olivarius, Reifler, Stone and Winkler, and denied as to plaintiff Price.

Dated at New Haven, Connecticut, this 21st day of December 1977.

Arthur H. Latimer

Arthur H. Latimer
United States Magistrate

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RONNI ALEXANDER, ET AL, Plaintiffs	
VS.	CIVIL NO. N-77-277
YALE UNIVERSITY, Defendant	

RULING ON MOTION TO DISMISS

Six months ago this Court denied defendant's motion to dismiss the complaint of a Yale senior, Pamela Price, who asserted an "implied" right of federal suit under Title IX's prohibition against sex discrimination in federally funded educational activities, cf. 20 U.S.C. § 1681(a), claiming that the university refused to act on her complaint that a low mark in her major field of study resulted from her rejection of the course instructor's sexual advances. Familiarity with that earlier opinion is assumed, and on reflection and study of the record on defendant's second motion to dismiss the undersigned perceives no sufficient reason to depart from the prior decision's analysis and conclusions.

In so indicating, it should perhaps be noted in passing that defendant has accurately sensed that this Court was in part concerned in the earlier motion proceedings at the illogic and unfairness involved if a state university student

could press her Title IX claim through suit under the traditional Civil Rights Act addressed to "state" denial of federal rights, 42 U.S.C. § 1983, but the identically situated private college student was denied recourse to the courts, cf. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Defendant's current observation that the private/public distinction is no anomaly but instead commonly accepted is beside the point in this instance; the analogy offered is the fundamental distinction made by the Fourteenth Amendment's constraints on state action, but Constitutional rights to due process and equal protection themselves exist only as a shield against the unfettered exercise of official power, while Title IX gives both the public and private institution student the same statutory right of freedom from discrimination and the question is solely how that right will be enforced. Although defendant also suggested that the grant of a private suit remedy may be an unconstitutional application of Title IX, the discrimination bar is surely a permissible condition to acceptance of federal funding, and enforcement by private suit in appropriate circumstances is a matter not of constitutional moment but of whether the judicial remedy has been properly implied.

Plaintiff holds the more general view that her specific experience is a function of Yale's asserted noncompliance with the basic implementing regulation calling for Title IX "grievance procedures", 45 C.F.R. § 86.8(b), surely a question of some importance for the enforcing agency. There was good reason at the outset of her suit to believe that relegating her to the expressly provided administrative remedy, cf. 20

U.S.C. § 1682, would be an empty exercise. Even prompt administrative action could not have been realistically expected to yield the effective immediate relief which was potentially critical, since plaintiff was then in the midst of the law school application process and apprehensive at possible imminent injury in that competitive situation because of her mark. That conclusion made it unnecessary to weigh factual contentions made by amici curiae that delayed and circumscribed agency enforcement of the law had proved the administrative remedy inadequate generally. An affidavit submitted by defendant's attorney now represents that HEW regional staff counsel has related that the office is "generally able to process complaints within established timetables, which range from 105 days to 215 days, and . . . may be extended if required for conciliation or data collection". If inconsistent with information from amici concerning agency practices, counsel's affidavit only confirms that the administrative remedy would have been futile in plaintiff's circumstances in December.

Following denial of the initial motion to dismiss, plaintiff's ensuing application for a temporary injunction went off without formal hearing when the parties agreed to the university's dispatching letters to law schools to which she had applied advising that the validity of the political science grade in question was being contested in a lawsuit. Plaintiff has now been admitted to the University of California at Berkeley, but wishes to pursue that university's special four-year program leading to both a law school degree and a master's degree in a field of graduate study -- political science in this instance -- because "interested in the possi-

bility of pursuing an academic career", and informs the Court that the necessary further application and supporting materials must be submitted by December of this year.

In short, plaintiff's situation is still such that the purported wrong complained of could directly cause her significant concrete injury as an impediment to career plans, but the circumstances now allow and perhaps demand definitive inquiry into the administrative remedy's adequacy -- of central concern in implying remedy by suit -- including judicial determination of the merit or lack of merit in plaintiff's contention that general experience has in fact already shown administrative enforcement of Title IX to be ineffective. Whether the administrative remedy bars suit or at least requires exhaustion may and should now be promptly decided, and decided in the context of a determination of the question of adequacy in fact, left open previously for development of a pertinent record by the parties.

The motion to dismiss is accordingly hereby denied on the record presented; provided, that counsel are to confer forthwith concerning preparation for and scheduling of hearing before the trial Judge of the potentially dispositive threshold issue mentioned above. In the interim, any discovery and development of evidence should be focused on that question, to facilitate prompt final decision of the issue, cf. Rule 42(b), Fed. R. Civ. P.

Dated at New Haven, Connecticut, this 30th day of June 1978.

Arthur H. Latimer
United States Magistrate

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-FOR IMMEDIATE RELEASE-

In a careful decision with far-ranging implications for women, Federal Magistrate Arthur Latimer on December 21 held that the lawsuit against Yale University for sex discrimination based on sexual harassment, pending since July, 1977 in New Haven, may go forward to a trial on the merits. Using reasoning developed in the context of employment discrimination, he held that sexual harassment, if proven, can constitute sex discrimination in federally funded educational programs. This is the first time that such a ruling has been made, according to Anne Simon, attorney for the plaintiffs. Magistrate Latimer also granted the right to sue in federal court, rather than relying exclusively on recourse to the Department of Health, Education and Welfare, and characterized more explicitly than ever before the requisites for such a suit.

Connecting sexual harassment in education with sexual harassment at work, Magistrate Latimer stated ". . . it is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment. . . ." He held institutions responsible when victims complain to officials who fail to act.

Noting that the adequacy of HEW's enforcement of Title IX, the statute on which the suit is based, had been questioned, Latimer

[MORE]

disagreed with recent rulings that plaintiffs may not seek private redress in federal court. He found it "obviously significant that the enforcing agency urges recognition of private suit rights," as HEW did in this case. Relying on the extensive acceptance of the right to sue privately in federal court under Title VI of the Civil Rights Act of 1964, the magistrate expressed concern that without a similar right under Title IX, which prohibits sex discrimination in education, there will be "substantially different enforcement rights to victims of sex discrimination than to those subjected to discrimination in federally-assisted programs 'on the grounds of race, color, or national origin'. . . ."

In the allegations of plaintiff Pamela Price, Magistrate Latimer found all the elements he held necessary for such a suit. Ms. Price alleges that she received a grade in a course that was not the result of her academic work, but rather a retaliation for her refusal of her male professor's sexual demands. She complained extensively to Yale officials, but not to HEW. According to the magistrate, absence of a "realistic possibility of a meaningful remedy" supported her access to federal court. Since she is now applying to law schools, the urgency of her case underlined the need for an adequate grievance procedure at Yale, the relief the lawsuit seeks. The ruling clears the way for a hearing on her request for an injunction that would temporarily suspend the operation of the grade.

Five plaintiffs were found not to meet Magistrate Latimer's criteria. Four of them were characterized as not being, at the

time the suit was filed, directly and personally victimized by the alleged discrimination. The magistrate held that one student, who had graduated when the suit was filed, would not benefit from the relief sought in the case, and thus her claim was moot. Other plaintiffs' claims were found not to allege a "personal exclusion from a federally funded edcuational program or activity or. . . personal denial of full participation in the benefits of such a program or activity in any measurable sense." In considering the contours of the claims, Magistrate Latimer also pointed to what he said was a "critical distinction" between the situation of Ms. Price and other plaintiffs dismissed from the suit, based on the extent to which complaints to university officials had been made.

Commenting on the importance of the ruling and the next steps to be taken, Ms. Simon said, "I am still studying Magistrate Latimer's thoughtful decision. It is an excellent example of the way women's real situation can be taken seriously. Because I think that some of the dismissed plaintiffs present claims that are important aspects of the problem of sexual harassment, I am actively contemplating the possibilities for appealing some of the dismissals."

[END]

Note: A statement by Ms. Price is available on request

--STATEMENT--

In November, 1977, I petitioned the Federal Court to become a plaintiff in the pending suit, Alexander vs. Yale, publicly known as the sexual harassment case. I petitioned the court for redress on two counts in the absence of any effective action being taken by Yale University to investigate my complaint and/or to offer relief. The two counts are inextricably linked, the one being the direct result of the other. On the one hand, I was sexually harassed by a professor employed by the defendant; on the other, I received a grade unreflective of the merit of my work at that time which can and/or will possibly irrevocably damage my career opportunities. On both counts I remain unsatisfied as to the nature and the extent of the action taken by Yale.

The primary issue on both counts is one of sexual discrimination. I entered Yale University in the fall of 1974, aware of its reputation as a bastion of male supremacy. Like most freshman and undergraduates in general, I did not take that reputation seriously. Yet, my experience over the next two years proved the reputation well earned in the past and in too many cases perpetuated in the present. In too many instances, I was subjected to the assumption of my inferiority as a black person as well as the assumption of my lack of seriousness as a woman. The particular incident which brings me here today was only a reflection of assumptions perpetuated and reinforced by the failure of Yale University to confront and effectively deal with the issue.

The issue is that as a woman student at Yale I am subject to prejudicail judgements prior to the beginning and completion of my course of study. The issue is that some, acting upon archaic and feudal assumptions, will attempt to compromise my respect for myself as a human being (i.e., as more than a sex object) The issue is that professors particularly are in a position of power; whether or not and how I will complete my education is determined as much by them as by my own efforts. Their position is totally based on the legitimacy granted by the institution which employs them. As such, that legitimacy should be restructured to more appropriately meet the needs of the students, male and female. More important, what is and is not legitimate in the relationship between the professional and his/her student should be defined by the institution which confers that legitimacy. Yale University has not only failed to confront and accept that responsiblity in any systematic manner, it accepts, upholds and defends the right of a professor to act in a manner detrimental to a student's education. (i.e. by a pattern, practice and policy of neglecting and refusing to process and consider seriously complaints of sexual harassment of women students).

That detriment can be manifested in various ways, each of which intimately connects a woman's intellectual growth, both to herself and others, to a man's judgement of her sexuality. In my particular case, this detriment has manifested itself not only in terms of my

own intellectual development but also in the form of a concrete obstruction to my educational advancement. I received a grade which is a reflection of the professor's personal defects rather than the quality of my work. This grade is a concrete expression of his racist and sexist appraisal of me as a person -- in my case the one attitude is inherently linked with the other. This grade not only excludes an evaluation of the quality of my work, it includes a historical conception of the relationship between my racial heritage and my sexuality. I am offended on both counts.

At this point, the arbitrary nature of the grade threatens my educational advancement beyond my relationship with Yale. It can and will have a substantial impact on my chances of being accepted at the law school of my choice. Not only must I strive to overcome the general racist and sexist attitudes prevalent in society, I must also deal with a specific manifestation of those attitudes on a very personal and individual level.

Hence, it becomes clear that the acceptance of that grade with no investigation whatsoever of the circumstances surrounding which it was given, requires an assent to sexual harassment and racism not only at Yale University but also in the attainment of my own academic goals. While others may be prepared to give their assent, I cannot in all reasonableness give mine. Consequently, I have petitioned the court not only to require the establishment of a procedure within the university to <u>effectively</u> deal with these issues, I have also requested that the offending grade be temporarily removed from my transcript until this matter is resolved. As the transcript is crucial to my application to law school (which must be made soon), unless immediate and effective action is forthcoming it will be too late. Six months from now, the grade will have no effect upon my admission to law school in 1978. Now it could mean everything. Yale's failure to deal in any systematic and effective manner with the issues raised by this suit and numerous complaints from women at Yale, and the invocation of the "sanctity" of the grading procedure and of this grade in particular, reflects a completely inadequate and repressive perspective on the position of women within the university. It follows that this perspective serves to condone, uphold and defend a practice of racist sexual discrimination and consequently subordination of women not only within the University, but within the society as a whole.

Pamela Price 21 December 1977
New Haven, Connecticut